Dec'r 7–18, Judge Davis.
Argued 1–200

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~279.~~ 604

AUGUST F. LUDWIG, ERNEST OTTENBERGER, AND ANDREW EYMER, APPELLANTS,

vs.

THE PROPELLER FREE STATE, HER ENGINE, &c., THE WESTERN TRANSPORTATION COMPANY, CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED OCTOBER 18, 1873.

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vs.

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INDEX.

	Original.	Print.
IN DISTRICT COURT RECORD.		
Libel	1	2
Stipulation to answer judgment	6	3
Exceptions to libel	9	4
Amended libel	10	5
Claim and answer	18	7
Libellants' depositions:		
Samuel Cokely	23	9
Samuel H. Beaton	26	10
George Rutherford	31	11
Libellants' testimony taken on hearing:		
William Weeks	39	13
Edmund Anderson	48	16
Benona Steembarge	50	17
Charles A. Jex	55–128	18–38
Horatio Jex	66	21
James Barnes	73	23
John A. Sloane	76	24
Albert Harryman	125	37
Thomas Willson	77	24
Frank B. Hackett	123	37
Claimants' testimony taken on hearing:		
Joseph Crigin	81	25

	Original.	Print.
George Dissett	99	30
William Livingstone, jr.	112	33
Harley Glass	112	34
Oliver Comstock	119	35
Interlocutory decree	129	38
Commissioner's report of damages	131	39
Vouchers	137	41
Depositions taken on reference:		
Charles A. Jex 147, 170, 182, 192	47, 53, 57, 61	
John Oades	166	52
Augustus F. Ludwig	168	52
Edward Mayes	172	54
William Morris	177	55
Joseph Nicholson	185	58
James I. Clarke	188	59
Orville Willcox	190	60
Claimants' exceptions to report	239	
Libellants' exceptions to report	242	82
Final decree	243	83
Appeal	246	83
Clerk's certificate	250	84
IN CIRCUIT COURT.		
Notice of hearing	251	85
Journal entries of hearings	253	85
Stipulation of claimants for damages	255	86
Decree and judgment of circuit court	257	86
Claim of appeal	258	87
Appeal to Supreme Court United States	259	87
Appeal-bond	263	88
Citation	265	89
Judge Longyear's opinion on final hearing in district court	269	90
Judge Longyear's opinion on exceptions to the commissioner's report in district court	279	93
Certificate of clerk of circuit court	291	96

a The district court of the United States for the eastern district of Michigan.—In admiralty.

AUGUSTUS F. LUDWIG, ERNEST ORTTENberger, and Andrew Eymer, libellants and appelle's,

vs.

THE PROPELLER FREE STATE, HER ENGINE, &c., the Western Transportation Company claimants and appellants.

b *Index to appeal record in district court.*

Libel	1
Stipulation to answer judgment	5
Exceptions to libel	7
Amended libel	9
Claim and answer	13
Libellants' depositions:	
Samuel Cokely	19
Samuel H. Beaton	23
Geo. Rutherford	29
Libellants' testimony taken on hearing:	
William Weeks	39
Edmund Anderson	48
Benona Steumburge	50
Charles A. Jex	55
Horatio Jex	67–129
James Barnes	74
John A. Sloan	76
Albert Harryman	126
Thomas Willson	78
Frank B. Hackett	124
Clai't's testimony taken on hearing:	
Joseph Creque	83
George Dissett	101
Wm. Livingstone, jr	113
Harley Gloss	114
Oliver Comstock	120
Interlocutory decree	131
Comm.'s report of damages	133
Vouchers 139 to 163, inclusive, and 227 to 263, inclusive	
Depositions taken on reference:	
Charles A. Jex	164–190–211
John Oads	186
Angustus F. Ludwig	189–201
Edward Moyes	192
William Morris	195
Joseph Nicholson	202
James J. Clark	204
Orville Willcox	207
Claimants' exceptions to report	264
Libellants' do do	268
Final decree	270
Appeal	274

To the Hon. John W. Longyear, judge of the U. S. district court for the eastern district of Michigan:

The libel of Augustus F. Ludwig, Ernest Orttenberger, of Port Huron, and Andrew Eymer, of Saginaw, all of the State of Michigan and eastern district of Michigan, against the Propeller Free State, her boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein in a cause of collision and damage, civil and maritime; and thereupon the said libel'ants do allege and propound as follows:

First. That your libel'ants, at the time when the cause of action hereinafter stated arose, were the owners of the scow C. & G. Meisel, which said scow, as well as the aforesaid propeller, were vessels of twenty tons burthen and upwards, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between ports and places in different States and Territories, upon the lakes and navigable waters connecting said lakes, within the true meaning and intent of the act of Congress.

Second. That on the 16th day of August, A. D. 1870, the said scow being then, and also at the time of the collision hereinafter mentioned, tight, staunch, strong, and in every respect well manned, tackled, appareled, and appointed, and having the usual and necessary complement of officers and men stationed at their proper posts and upon the lookout for the protection and safety of said vessel, was bound on a voyage from Kelly's Island, on the northwestern part of Lake Erie, for Saginaw, in the State and eastern district of Michigan, laden with a cargo of about forty (40) cords of building-stone.

Third. That on the morning of the 17th of August aforesaid, between the hours of 3 and 4 o'clock, and when the said scow had proceeded on her voyage so far as Bois Blanc Island, in the lower part of Detroit River, and in the channel where she had a perfect right to be, with her proper signal lights properly placed and brightly burning, and that so running with her watch and ward carefully attentive to the safe navigation of their said vessel, she was approached by the said propeller Free State, bound down the river, which said propeller was so carelessly, recklessly, and negligently navigated that she was made to run into and collide with the said scow on her port side, some 3 or 4 feet forward of her main rigging, crushing in her side and causing her to fill and sink with her cargo almost immediately.

Fourth. That libel'ants were also the owners of the cargo of said scow, which, as libel'ants allege, was of the value of about four hundred dollars.

Fifth. That said scow still lies sunken and a wreck in Detroit River, and is thereby become a total loss, with her cargo, to the said libel'ants.

Sixth. That the value of the said scow was about eleven thousand dollars, and that her said cargo was of the value of four hundred dollars as aforesaid; that libel'ants also had one hundred and forty dollars in cash, which was also lost and sunk with said scow, and that libel'ants, by reason of said collision and damages have suffered losses amounting in all to the sum of eleven thousand four hundred and forty dollars, for which your libel'ants claim they have a lien upon said vessel, enforceable in this honorable court.

Seventhly. That the aforesaid collision was occasioned solely by the negligence, unskillfulness, and carelessness of the persons navigating the said propeller Free State, and not by nor through

any fault, negligence, nor improper conduct on the part of your libel'ants' said vessel, her master nor crew.

Eighth. That since the aforesaid collision your libel'ants have applied, in a friendly manner, to the agent of the owners of the said propeller Free State, and requested him to settle for the damages sustained by your libel'ants as above mentioned; but the agent of the said owners has refused to pay the said eleven thousand four hundred & forty dollars or any part thereof.

Ninth. That all and singular the premises are true, and that the said propeller Free State is now lying or soon expected to lie at the port of Detroit, in the district aforesaid.

Wherefore your libel'ants pray that process in due form of law, according to the course and practice of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said propeller Free State, boats, tackle, apparel, and furniture; and that all persons having any interest therein may be cited to appear and answer
5 all and singular the matter aforesaid; and that this honorable court will be pleased to decree the payment of the damages aforesaid, with costs; and that the said vessel may be condemned and sold to pay the same; and that your libel'ants may have such other and further relief as in law and justice they are entitled to receive.

(Signed) E. ORTTENBERGER.
A. EYMER,
By AUGUST F. LUDWIG.
AUGUST F. LUDWIG.

MOORE & GRIFFIN,
Libel'ants' Proctors.

EASTERN DISTRICT OF MICHIGAN,
Wayne County, ss:

Be it remembered, that on this 2d day of September, A. D. 1870, before me, at Detroit, personally appeared the within-named August F. Ludwig, one of the within-named libel'ants, and made solemn oath that he has heard read the foregoing libel, and knows the contents thereof, and that the same is true as he verily believes.

(Signed) AUGUST F. LUDWIG.

Subscribed & sworn to before me this 2d day of September, A. D. 1870.

S. T. KILSO,
Notary Public, Wayne County, Mich.

Filed in clerk's office September 3rd, 1870.

D. J. DAVISON, *Clerk.*

6 District court of the United States for the eastern district of Michigan, in admiralty.

On this thirteenth day of September, in the year of our Lord one thousand eight hundred and seventy, before Darius J. Davison, of the city of Detroit, Michigan, a commissioner duly appointed and empowered to take acknowledgements of bail, affidavits, and depositions, &c., within the district of Michigan, in the matter of the libel and claim of Augustus F. Ludwig, Ernest Orttenberger, and Andrew Eymer, against the propeller Free State, her engines, &c., in a cause of collision civil and maritime, moved and prosecuted in the district court of the United

States for the district aforesaid, which day personally appeared William Livingstone, junior, agent and att'y-in-fact of the Western Transportation Company, as claimant of the said propeller Free State, her engine, &c., and produced for surety William Livingstone, jr., and of the city of Detroit, Michigan, in said district, and the said Western Transportation Company, William Livingstone, jr., and submitting
7 themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of fifteen thousand ($15,000) dollars unto the said Augustus L. Ludwig, Ernest Orttenberger, and Andrew Eymer, that the said Western Transportation Company shall abide and answer the decree of the said court in the aforesaid cause; and unless he shall do so they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, wherever the same may be found, to the value of the sum above mentioned.

(Signed) WESTERN TRANSPORTATION CO.,
By W. LIVINGSTONE, JR.,
Agent and Attorney-in-Fact.
W. LIVINGSTONE, JR.

Taken and acknowledged this 13th day of September, A. D. 1870, before me.

D. J. DAVISON,
U. S. Commissioner 6th Circuit and Eastern District of Michigan.

8 EASTERN DISTRICT OF MICHIGAN, *ss:*

Appeared personally W. Livingstone, jr., of the city of Detroit, and made oath that he is worth the sum of fifteen thousand dollars of lawful money of the United States of America, after payment of his just debts, in real estate, subject to execution, within the eastern district of Michigan, a considerable portion of which real estate is situated in the city of Detroit.

(Signed) WM. LIVINGSTONE, JR.

On the 13th day of September, A. D. 1870, the said Wm. Livingstone, jr., was sworn to the truth of the above attestation before me.

D. J. DAVISON,
U. S. Commissioner 6th Circuit and Eastern District of Michigan.

Taken, acknowledged, and filed September 13th, 1870.

D. J. DAVISON, *Clerk.*

9 To the honorable John W. Longyear, judge of the district court of the United States for the eastern district of Michigan, in admiralty.

The exceptions of the Western Transportation Co., claimant, to the libel of August F. Ludwig, Ernest Orttenberger, and Andrew Eymer, against The Propeller Free State, alleges that the libel is informal and insufficient, for the following reasons:

First. It does not state the various allegations of facts upon which the libel'ants rely in support of their suit.

Second. It does not state any facts showing, or tending to show, that

the said collision was occasioned by the negligence or improper management of the said propeller, her officers or crew.

Third. It does not set forth the particulars of the fault claimed to exist on the part of the said propeller.

(Signed) NEWBERRY, POND & BROWN,
Claimant' Proctors.

Exceptions filed October 4th, 1870.

D. J. DAVISON, *Clerk.*

10 *In admiralty.*

To the honorable John W. Longyear, judge of the United States district court for the eastern district of Michigan:

The amended libel of August F. Ludwig & Ernest Orttenberger, of Port Huron, and Andrew Eymer, of Saginaw, in the eastern district of Michigan, against The Propeller Free State, her engine, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision and damage, civil and maritime; and thereupon the said libellants do allege and propound as follows:

First. That your libel'ants, at the time when the cause of action hereinafter stated arose, were the owners of the scow C. G. Meisel, which said scow, as well as the aforesaid propeller, were vessels of twenty tons burthen and upwards, enrolled for the coasting trade, and employed in the business of commerce and navigation between ports and places in different States and Territories, upon the lakes and navigable
11 waters connecting said lakes, within the true meaning and intent of the act of Congress.

Second. That on the 16th day of August, A. D. 1870, the said scow being then, and also at the time of the collision hereinafter mentioned, tight, staunch, strong, and in every respect well manned, tackled, appareled, and appointed, and having the usual and necessary complement of officers and men stationed at their proper posts, and upon the lookout for the protection and safety of said vessel, was bound on a voyage from Kelly's Island, on the northwestern part of Lake Erie, for Saginaw, in the State and eastern district of Michigan, laden with a cargo of about forty (40) cords of building-stone.

Third. That on the morning of the 17th of August aforesaid, between the hours of 3 and 4 o'clock, and when the said scow had proceeded on her voyage so far as Bois Blanc Island, in the lower part of Detroit River, and while running up said river and in the channel, where she had a perfect right to be, with her proper signal-lights properly placed and brightly burning, and the while so running with her watch
12 and ward carefully attentive to the safe navigation of their said vessel, she was approached by the said propeller Free State, bound down the river, which said propeller was so carelessly, recklessly, and negligently navigated that she was made to run into and collide with the said scow, striking her on her port side, some 3 or 4 feet forward of her main rigging, crushing in her side, and causing her to fill and sink with her cargo almost immediately.

Fourth. That for some time prior to said collision said scow had been running up on the starboard side of the channel, but that as she approached the red can-buoy, so called, the steamer Jay Cooke came along up and passed on the starboard side, close aboard, between the said scow and the said buoy. The wind was then about W. S. W., and

free to said scow. That immediately after the said steamer had passed her helm was ported and she was headed after the steamer, and was following along in her wake; that almost immediately after the said propeller, which had been coming down the river, having passed
13 on the port-hand side of said steamer, and approaching as if to pass free and clear on the port-hand side of said scow, seemed suddenly to have changed her heading, as of under a starboard wheel, came on, apparently without stopping or shrieking, and struck the said scow and sunk her as aforesaid.

Fifth. That libel'ants allege that the said propeller was guilty of faults which contributed to the collision in the following particulars:

1. She was running without her proper signal-lights.

2. She had no competent watch nor lookout on deck and attentive to their duties.

3. She did not continue her course and pass on the port side, as it was her duty to have done.

4. That she was not checked and stopped, as she should have been when a collision appeared probable.

5. That she was not fully equipped, manned, and provided as required by law.

Sixth. That libel'ants were the owners of the cargo, of which
14 about the value of two hundred (200) dollars was lost, as well as one hundred and forty (140) dollars in cash, which was lost by said collision.

Seventh. That libel'ants were compelled to pay, lay out, and expend, in order to raise and repair said scow, so as to make her in as good condition as she was before, about the sum of seven thousand ($7,000) dollars. They were compelled to pay and lay out the further sum of about five hundred dollars ($500) for raising and saving as much of the cargo as was saved.

Eighth. That the said scow was necessarily detained while being sunken and being raised and repaired for the period of fifty-eight days; that the value of her services during said time, while so detained, was about forty-four dollars per day, including wages and board of officers & crew, and the said scow could have earned that sum, and could have been chartered for such sum per day; and libel'ants suffer loss thereby in the further sum of twenty-six hundred and ten ($2,610) dollars.

15 Ninth. That libel'ants suffered damages arising from said collision to the several amounts above named, amounting in all to the sum of ten thousand four hundred and fifty ($10,450) dollars, for which your libel'ants claim they have a lien upon said vessel, enforceable in this honorable court.

Tenth. That the aforesaid collision was occasioned solely by the negligence, unskillfulness, and carelessness of the persons navigating the said propeller Free State, and not by or through any fault, negligence, or improper conduct on the part of your libellants' said vessel, her master or crew.

Eleventh. That since the aforesaid collision your libel'ants have applied in a friendly manner to the agent of the owners of the said propeller Free State, and requested him to settle for the damages sustained by your libel'ants as above mentioned; but the said agent of the owner has refused to pay the said ten thousand four hundred and fifty dollars, or any part thereof.

Twelfth. That all and singular the premises are true, and that the
16 said propeller Free State has been seized and bonded in the district aforesaid.

Wherefore, your libel'ants pray that process in due form of law, according to the course and practice of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said propeller Free State, her engine, boats, tackle, apparel and furniture; and that all persons having interest therein may be cited to appear and answer all and singular the matters aforesaid; and that this honorable court will be pleased to decree the payment of the damages aforesaid with costs; and that the said vessel may be condemned and sold to pay the same, and that your libel'ant' may have such other and further relief as in law and justice they are entitled to receive.

(Signed) A. F. LUDWIG.
E. ORTTENBERGER.
ANDREW EYMER,
Pr. CHAS. A. JEX,
Attor'y in fact.

MOORE & GRIFFIN,
Libel'ants' Proctors.

EASTERN DISTRICT OF MICHIGAN, *Wayne County, ss:*

17 Be it remembered, that on this seventh day of January, A. D. 1871, before me, at Detroit, in said county, personally appeared Charles A. Jex, master of the said scow and attorney in fact of the said libel'ants, and made solemn oath that he has heard read the foregoing libel and knows the contents thereof, and that the same is true, as he verily believes.

S. J. KILSO,
Notary Public, Wayne County, Michigan.

Filed in clerk's office January 7th, 1871.

D. J. DAVISON, *Clerk.*

18 To the honorable John W. Longyear, judge of the district court of the United States for the eastern district of Michigan, in admiralty:

The claim and answer of the Western Transportation Company, a corporation organised and doing business under and by virtue of the laws of the State of New York, intervening for its interest in the propeller Free State, her boats, tackle, apparel, and furniture, to the libel as amended of August F. Ludwig, Ernest Orttenberger, and Andrew Eymer, against the said propeller, alleges and propounds as follows:

First. That the said Western Transportation Company claims the said propeller, her boats, tackle, apparel, and furniture, and states that it is the true bona-fide owner of the same, and that no other person is the owner thereof.

Second. That it is ignorant of the several allegations contained
19 in the first, second, sixth, seventh, eighth, ninth, and eleventh articles of said libel, and therefore requires strict proof thereof. It admits, however, that the said propeller was of the burther and description set forth in the first article.

Third. It further admits that at about the hour and place stated in the third article of the said libel a collision occurred between the said propeller and the said scow C. G. Meisel, but it denies that said collision took place in the manner set forth in the third, fourth, and fifth articles, and also denies each and every allegation contained in the said articles except as hereinafter admitted, and alleges that the facts and circum-

stances of said collision are as hereinafter stated and set forth, and not otherwise.

Fourth. That on the seventeenth day of August, A. D. 1870, the said propeller being tight, staunch, strong, and in every respect well manned, tackled, appareled, and appointed, and having the usual and necessary complement of officers and men stationed at their proper
20 posts, upon the lookout for the protection and safety of said vessel, and having the usual signal-lights properly displayed and brightly burning, was bound on a voyage from Chicago to Buffalo; that about 3.40 o'clock in the morning of said 17th day of August, and when said propeller had reached a point in Detroit River, a short distance above Amherstburg, and while proceeding at her usual speed down near the middle of the channel, the green light of a small vessel, which subsequently proved to be the said scow G. C. Meisel, was descried from the deck of said propeller, bearing a little upon the starboard bow of said propeller; that as the said vessels approached each other, the said green light seemed to be keeping further to starboard, when, to make certain of giving her ample room, the wheel of said propeller was put to starboard; that both vessels approached each other until the green light of said scow bore about 1½ points on the starboard bow of said propeller, when said scow began to swing across the track of said
21 propeller, and, immediately after, shut in her green and displayed her red light; that upon observing this change the wheel of said propeller was instantly ported, and her engine stopped and backed, but too late to avoid the collision, which ensued almost immediately thereafter, the said vessels meeting very nearly in the manner stated in the third article of said libel.

Fifth. These claimants, further answering, deny that said collision was occasioned in any manner by the negligence or unskillfulness of the persons navigating said propeller, but that the same was caused solely by the fault, negligence, and improper conduct of said scow C. G. Meisel, and amongst other things in the following particulars:

1. That no proper lookout was kept on the said scow.

2. In that said scow did not keep her course as she ought to have done.

3. In that she failed to have the proper officers and crew at their proper posts and attentive to their respective duties.

Wherefore this claimant prays that said libel may be dismissed
22 with costs, and that it may have such further and other relief as in justice and equity it may be entitled to receive.

THE WESTERN TRANSPORTATION CO.,
By JNO. ALLEN, JR., *President.*

NEWBERRY, POND & BROWN,
Claimant's Proctors.

NORTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that on this 24th day of February, A. D. 1871, before me personally appeared the above-named John Allen, jr., and made oath that he was agent and attorney-in-fact of the said Western Transportation Company; that he had read the foregoing claim and answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the fact and circumstances of said collision, and as to those he is informed and believes it to be true.

[SEAL.] JAS. SHELDON,
U. States Commissioner.

Filed February 25th, 1871.

D. J. DAVISON, *Clerk.*

In the district court of the United States for the eastern district of Michigan, in admiralty.

AUGUST F. LUDWIG & ERNEST ORTTENBERGER
vs.
PROPELLER FREE STATE.

On the 22d day of September, A. D. 1870, came before me Wm. A. Moore & H. B. Brown, esquires, proctors for the respective parties to the above-entitled cause; and the said Moore produced as witness on behalf of the said libel'ants SAMUEL COKELY, who, being by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, says:

I am thirty years of age. I reside in Clinton, Jefferson County, New York; am a sailor; have sailed seventeen years; have sailed both as mate and second mate. All my sailing has been on the lakes; was a hand before the mast, on the scow C. G. Meisel, at the time she was run into by the Free State; was in mate's watch, and below; turned in at about 12 o'clock; had been at the wheel from 10 to 12; went to sleep immediately after turning in. It was a bright, nice moonlight
24 night; was awakened by the captain calling us, not more than 2 minutes before the collision; may not have been so long as that; had only a cotton shirt on at the time; did not stop to put on my clothing before I got on deck. When I got on deck she, the propeller, was heading for us to strike us in the fore-rigging; wind W. S. W.; should think she was about twice her length off; struck us stem on, on port side, before the main rigging; got on the propeller by her anchor-stock; saw no lights on the propeller. After I got on board of her I saw the mast-head light hoisted on board of her. Our lights, starboard and port, red and green, were in first-rate condition.

Cross-examination:

Our lights were on the starboard and port fore-rigging; hung with screens painted red and green; did not see any lights on the propeller at all. It was 20 minutes to four by our time on the schooner. It was a beautiful, clear night. It was morning. It was betwixt moon-
25 light and dark. We could see each other a mile off; could not see to read without a candle. N. ½ E. we were steering when struck; wind W. S. W. I know that by the compass; looked at the compass when I went aft, about 3 minutes before the collision, the time I was called up by the captain from the forecastle. When the captain called us he said, "Come up, boys; she is going to put us." There was only two of us. We were lying forward in the forecastle. When I got on deck the propeller was about twice her length off. When I came on deck I run aft to get out of her way—some way to save my life. It is a fashion sailors have to look at the compass; I do, no matter where it is; that is how I came to look at it; scow was pointing towards the Canada shore, pointing for the red buoy. We can't go inside of that unless we draw less than 6 feet of water. The scow was about 300 yards from the Canada shore—that much, anyway. I suppose we were in Canada water; altogether, we were nearest the mainland on the head of Boblow
26 Island; wind was over port quarter of scow when she was struck. I say her, the propeller, mast-head light was hoisted after I got aboard of her. I saw no colored lights on her. When I looked at the compass one George Rutherford was standing by it. Jim Barnes was at the wheel. I went round aft to the cabin, forward again to see if I

could get my things; can't tell from where I looked at the compass; somewhere aft of——

his
SAMUEL + COKELY.
mark.

Subscribed & sworn to before me this 22d day of September, A. D. 1870.

S. J. KILSO,
Notary Public, Wayne County, Michigan.

And on this thirtieth day of September, 1870, came the said Moore and Brown, and the said Moore produced SAMUEL H. BEATON, who, being by me first duly cautioned and sworn to tell the truth, the
27 whole truth, and nothing but the truth touching the issues to be tried in the above-entitled cause, says: He is 27 years of age; that he resides in Port Huron; occupation a sailor. Has sailed about eleven years; 5 years as mate on the lakes; was mate of the scow Meisel at the time of her collision with the Free State. This is the third season I have been mate on said scow. Collision occurred between 3 and 4 o'clock on the morning, and during the master's watch. The master took the deck a little after 12 o'clock, shortly after which I went below. I went to sleep shortly after I went below. Mr. Rutherford, the man at the wheel, awoke me. He sung out for us to turn out—"there was a propeller going to run into us." I turned out, and got on deck just as the propeller struck us. I heard our master say, "You have done a pretty nice thing now, captain." He replied. "God damm you, then, keep out of the way." Heard nothing else from the propeller; went to work to lower away the yawl-boat. I hear a whistle made just as
28 she struck. It was a small whistle. This was just about the time she struck. It was just a short single whistle. When I came on deck I had just time to look at her before she struck, perhaps 6 or 7 feet off; with her good headway it would not take long to come that. She was off the port bow. We were heading pretty well over to the Canada shore, starboard side of the river. Captain was standing about midships, coming aft. We were on the Canada side. It was just break of day. I saw no lights on the propeller. I would have seen them if they had been burning in their proper places. I could have seen her mast-head light and her green light before she struck, if she had had them. It was a clear starlight night when I turned in. Our lights were burning well, green and red; we carried them in the fore-rigging, 6 feet from the deck, nothing to obstruct their being seen forward. Did not notice our lights after I got up. Did not have time to go forward. Think she struck in not over two minutes. It was both starlight
29 and moonlight when I got up. The wind was W. S. W. I could not tell whether propeller was under check; she was running at pretty good speed. I turned in with my pantaloons and socks on, & turned out that way; didn't wait to put on any other clothing; just came on deck as I turned out. Have been with Captain Jenks 5 years.

Q. What are his habits as to standing watch and to carefulness?

(Objected to as irrelevant.)

An. Always found him to be a very careful man, always stood his own watch. Carried no second mate. Captain's wife and child were lost. No one else. Captain is a good sailor, first rate.

(Ans. objected to as irrelevant as to his being a good sailor.)

Qu. State if you know of any fault, carelessness, or negligence, on the

part of any of the officers of the scow, whereby the collision was caused or contributed to?

(Objected to.)

Ans. No, sir; I don't know of anything.

Cross-examined:

30 I guess Cokely was on deck first. He is at the other end of the schooner; am not sure about it. I know the wind was W. S. W. from the way we were heading; the wind was on our port quarter. I should think we were about 100 feet from the channel bank, and about 400 feet from the land. There is a big flat runs out there. I guess that is about it.

his
SAMUEL H. + BEATON.
mark.

Witness: S. J. KILSO.

Cross-ex. co'm.:

Qu. State whether the scow had a full crew?

An. Yes, sir; we had a full crew: captain, mate, 4 sailors, and female cook.

SAMUEL H. + BEATON.

Witness: S. J. KILSO.

Subscribed and sworn to before me this 30th day of September, A. D. 1870.

S. J. KILSO,
Notary Public Wayne County, Michigan.

31 And the said Moore also produced on behalf of the libellant GEORGE RUTHERFORD, who, being in like manner duly cautioned and sworn, says:

I am 25 years of age; reside in Colborn, Ontario; am a sailor; sailed nine seasons on lakes and rivers; was on the Meisel at the time she collided with the Free State; was in the master's watch; came on deck at 12; from 12 to 2 was forward on the lookout; from 2 until the collision I was at the wheel; captain's brother, Horatio, was also on deck; the collision was a little before 4 o'clock; it was a nice and clear morning—moonlight; it was not daylight; it was breakey day. Captain, during his watch that morning, was on deck, forward and amidship; Horatio Jenk was on the lookout; while I was at the wheel. The propeller, when I saw her first, was off six or seven lengths; not when I first saw her; then she was up the river; when I first saw her she was over the port bow about a point, I should think, and we were heading in towards the land; the propeller was above the buoy, by the Insane Asylum,

32 and we were on the right-hand side of the channel, coming up; the master was about midships when I first saw the propeller; Jenk, the lookout, was forward on the bows, I suppose; I did not see him; I was steering by shore-marks; had orders from the master how to keep her. We were running, I could not say how, by the compass. I do not know the course exactly by the compass; wind was W. S. W.; we had it on the port quarter. I did not see any lights on the propeller; propeller was heading, when I saw her first, as if she would pass a long way clear of us on the port side. The Jay Cook passed up on our starboard side at the time, about two or three lengths of her vessel distant from us. The J. Cooke blew one whistle just about the time

she was abreast of us, alongside; that whistle was answered by the propeller with one whistle. The Jay Cook passed us; after she passed us, the captain told me to keep her way, which I did, until he told me to steady her; when I stead'ed I was heading for the Jay Cook's stern; at that time the propeller was about six or seven lengths off, and was
33 still heading out to keep clear of us, to pass on the port side. I heard a hail, but did not make out what it was; the hail was from the propeller. On that hail the master told me to keep her away more. I did so; she swung well off; the propeller came on, striking us near midships, on the port side. After the propeller came in sight the master was all the time on deck, in my sight, forward, attending to the navigation of the vessel. While I was lookout the lights were burning in the fore-rigging. She was a good-steering vessel; minds her wheel very well; had been on her since the latter part of May. The propeller, as she came towards us, was running very fast; whether checked or not I do not know, but don't think it. Our lights must have been burning all right; the red light was burning when it was taken off.

Qu. What more could you have done than was done to avoid the collision, in your judgment as a sailor?

An. I know I couldn't have done anything more.

34 Qu. What kind of a sailor is Captain Jex, in your judgment? (Objected to.)

An. As good a man to handle a vessel as I have been with, as far as I can judge. We had a full crew. In my judgment there was nothing to have prevented the propeller from passing us on the port hand; she could have done it very easily; there was nothing on the river to prevent her. In coming up the vessel was kept steady when I was told to steady her.

Qu. State whether she ran steadily or not, or whether she was run ning back and forth across the river.

(Objected to as leading.)

An. I said she steered easy, and therefore run steady.

Qu. Do you know of any carelessness or negligence on the part of any of the officers or crew of your vessel which led to the collision?

An. I do not.

Qu. If the propeller had had lights, would you have seen them?

35 An. Yes; I think so. I could see her plain enough. I answered before that I could have done nothing else than what I did to prevent the collision. I add that I do not think the master or any of the crew could have done anything more than was done to avoid it.

Cross-ex:

Have sailed on almost all kinds of vessels; not on steamers. Sailing-vessels all the time; on schooners; this the only scow. At the time of the collision captain and his brother and myself were on deck; that is, at the time of seeing the propeller first. At the time of the collision all hands were on deck; as lookout I stood forward. When I saw the propeller first I cannot say how far she was off. I can't guess at it. We were then heading towards the Canada shore. The wind was pretty well aft. We were bound for Saginaw.

Qu. If the wind were aft, and you were bound up the river, why were you heading toward the Canada shore?

An. That was the course I had.

36 Qu. If you had kept on in that course you would have run ashore, wouldn't you?

An. Yes; likely. When I first saw the propeller I do not know exactly where the Jay Cooke was. She was abreast of us when she blew the whistle; she was on our starboard side.

Qu. You say the course you had was towards the Canada shore. Who gave you that course?

An. I steered by the captain's orders. I don't know what the last order was before I saw the propeller. I could not say how long it was after I saw the propeller that she struck us.

Qu. Were you not heading as near up the river as you could when you first saw her?

An. As I said before, we were heading a little for the Canada shore. Our fore and main sails were on the starboard side; of course they had to be when the wind was a little to the westward. When the Jay Cooke passed us I could not say how far off the propeller was. I can't
37 say how long it was from that time until the collision. After she, the propeller, blew the whistle, the captain told me to keep her away. I don't know how far off the propeller was then. Can't tell whether she was off 3 lengths or half a mile. O, she wasn't half a mile off, but I can't tell exactly. After the propeller hailed, the master told me to keep away again. I don't know how many points of the compass she kept away, but enough to head for the Jay Cooke's stern, I think. After I steadied her I don't know how long it was until I heard the hail.

Qu. From the time of the first order to keep her away, until the collision, did she swing 4 points?

An. I could not say how many points; I was not looking at the compass.

Qu. At the time you struck were you heading up the river, down the river, or towards the shore?

An. Not any of those ways directly; we were heading toward the shore, but not straight on. The Jay Cooke passed on the port side of the propeller. When I got the second order to keep away, the
38 propeller was within hailing distance, but I don't know how far off.

(Signed) GEORGE RUTHERFORD.

Sworn to and subscribed before me the 30th day of September, A. D. 1870.

S. J. KILSO,
Notary Public, Wayne County, Michigan.

Filed Oct. 3rd, 1870.

D. J. DAVISON, *Clerk.*

39 AUGUST F. LUDWIG, ERNEST ORTENBERGER, Andrew Eymer,
vs.
THE PROPELLER FREE STATE.

U. S. Court, in admiralty. April 12th, 1871.

WILLIAM MEEK sworn on behalf of the libel'ants.

Examined by Mr. Moore:

I reside in London, Canada, and am chief attendant of the lunatic asylum. August 17th, 1870, I was in Amherstburg, and was acting as night-watch at the Amherstburg asylum. Amherstburg is on the bank of the Detroit River.

Qu. How far above what we call red can-buoy?

A. It is almost facing it; it is nearer facing Mr. McLeod's house. I saw the collision that took place there between the scow Meisel, and the propeller Free State. It was a beautiful moonlight morning. I was out on the bank of the river, seeing the Jay Cooke go up. I saw the
40 propeller Free State coming down. The Jay Cooke and the propeller exchanged salute sor signals about thirty or fourty feet, I suppose, below the buoy; the scow was coming up with a good breeze, the wind blowing from the southwest; she was heading in towards the shore. The propeller came down and I distinctly heard the conversation that passed between the two men. I swung a lamp that I carried in my hand, and I said look out you are going to run in. He cried out to me, "Go to hell, you son of a bitch!" that was one of the men on board the propeller. I heard the man on board the propeller cry to the scow to keep clear; he said he was clear; the man said "Keep clear you bugger" or "you son of a bitch," I forget which, it was something to that effect. Presently, as the scow came in closer, it appeared to me as if the propeller headed inside of the buoy, the water-mark, and took her about amidships. I then got a boat and went out, with the assistance of Miss McLeod, and the superintendent, to the rescue of the drowning,
41 for I heard them shouting for help from the scow. On the way out we met a boat coming in, and they had a woman as I supposed. I says, "Have you any of the drowning?" They said "Yes, but go ahead, you will meet others." As we went out I heard the faint voice of a woman crying, "My God! My God!" I think the woman sank about 150 feet below the stern of the scow. The scow floated down about 150 yards; they were fast together.

I noticed the scow when she was coming up. She was on the Canada side, heading inside of the water-mark. (I call the red can-buoy the water-mark.) I saw her when she got into the bay down by D. Reynolds' place; that, perhaps, is a quarter of a mile below the dock at Amherstburg.

Qu. How was she there in regard to the channel?

A. She appeared to be inside, hugging the shore pretty well.

Qu. When you saw the propeller coming down, how was she heading as to the shore?

A. She crossed the Jay Cooke; that was her course.

42 Q. Astern of her?

A. I would not be positive. When the collision took place, I was nearly opposite them, because I distinctly heard the conversation, as I have stated. I went down in the morning; the propeller lay at the dock; the men were rolling off flour. I says, "That is rather a sad accident." (Interrupted by counsel.) The captain of the propeller was there; I would not be positive that I understood the captain to make any remarks about the collision. I saw the captain there; that was about half past six in the morning. (Witness identifies a gentleman in the court-room as the captain whom he saw.)

Q. What was that man's condition that morning as to intoxication?

A. When I first saw the captain and the crew, that was about half past six; the collision took place at ten minutes to four by my watch.

Mr. BROWN. I object to any evidence as to the condition of the captain at half past six.

(Objection overruled.)

43 Q. Will you state what his apparent condition was then, as to intoxication?

A. He seemed to me as if he had been under the influence of liquor.

Cross-examined by Mr. Brown:

It was customary for me to go around the institution once every two hours. I was then, and for ten years had been the watchman of the institution. I walked close to the bank of the river. The first vessel I saw was the Jay Cooke; she was going up; she was above me.

Q. You didn't come out on the bank of the river until the Jay Cooke had passed?

A. The Jay Cooke was passing up; she was about our white gate, that is, about a hundred feet from the center; she passed the Free State. I would not be positive as to which side. The scow was then about at Mr. Hackett's dock; that might be, say, a quarter of a mile from where I was. She (the scow) showed both lights. I saw both her lights
44 all the time. She did not appear to me to change her course from the time I saw her. She kept hugging the shore all the time. The collision occurred about thirty feet below the buoy. They floated down then for about 130 yards from the buoy, and the scow sank.

Q. The scow had time to come up the river a quarter of a mile from the time you saw her first until the collision?

A. Yes, sir; just about that. I was standing on the bank of the river. The scow might have been in sight four hours before I saw her. I speak merely of what I saw. She was coming directly up the stream. I didn't see her coming across at all. At the time of the collision she was in British waters. I didn't measure the distance from the Canada shore. I couldn't say that she was two boats' lengths from the water-mark. At the time of the collision she was pointing in towards the shore, hugging the shore as much as possible. There is a bend in the river there, and she appeared to me as if she were running in. Her stern was
45 pointing almost in a direct line with the course of the river, with the current.

Redirect-examination by Mr. Moore:

The propeller Meteor, hearing the collision, rounded up and came back. There was no vessel at anchor in the channel that I saw. From where the collision took place, the most of the channel was on the side next to Bois Blanc Island.

Q. Could you see, when the scow passed you, her red light?

A. Yes, sir.

Q. When she was passing?

A. The scow didn't pass me; the collision took place just below the water-mark, and the water-mark is nearer Mr. McLeod's house than it is to the institution.

I was standing on the brink of the river-bank, about thirty feet above the red can-buoy, and this collision took place about thirty feet below it. When I was standing there just before the collision, I could see both lights of the scow. She was heading towards me. When I went
46 down in the morning, the captain, whom I did not know from any other man, was pointed out to me by the mate. I think it was he who is here now. I says to the captain: "This is a sad affair." He says: "It was not our fault; the damned fools should have kept the right course." I said to him, then, I considered from what I had seen, that they were in the right course. To this there was no reply. I am not a seaman.

Q. You don't know anything about their courses, do you?

A. No, sir. For the last eleven years I have seen vessels pass up and down, and have seen a good many hair-breadth escapes.

Q. State whether the scow Meisel came up in the usual course, hugging the shore.

(Objected to by Mr. Newberry on the ground that it has not been established that there is any usual course; also, that the witness has not been shown to be a competent judge. Obj. sustained.)

I have frequently seen vessels of that class pass up there, and I have seen them, as a general thing, come inside the water-mark. The
47 scow Meisel was heading inside of the water-mark at the time, and she appeared to me to be so heading from the time she left Hackett's dock.

Q. That is inside the curve of the red can-buoy?

A. Yes, sir. There is a curve in there, I suppose, about half the size of this court-room.

Recross-examination:

The scow was in a way so that there was no reason for the propeller interfering with her at all. The propeller had plenty of room to pass. The collision occurred below the buoy.

Q. Did the propeller pass inside or outside the red can-buoy?

A. She struck across; she almost grazed the buoy. I wouldn't be positive whether she passed inside or outside. I know they floated down a distance, and when I went out with the boat, she was lying below the buoy about 150 yards.

Questions by Mr. Newberry:

When she sank she was further away from the Canada shore than when the collision occurred. I can hardly say how much
48 further. She might have been thirty yards further out.

Q. Was there not abundant room between the place she sank and the channel-bank for the largest steamers to pass without difficulty, or was she so close they could not pass?

A. I thought at the time that certainly the propeller would run ashore.

(Same question repeated.)

A. Yes, sir; there was plenty of room where she went down—plenty of room.

EMMUND ANDERSON sworn on behalf of libellants.

Examined by Mr. Moore:

I reside at Amherstburg, and am collector of customs. I recollect the time of the collision between the Free State and the Meisel. It was the 17th of August last, but I did not witness the collision. I saw the captain of the Free State that morning. He first called at my place between 4 and 5 o'clock, I should say, in the morning.

Q. Will you state what his appearance then was as to intoxication.

49 A. He was either under a state of nervous agitation or he had been drinking. That would be my conclusion. I also saw him about half past six—about the same time that Mr. Meek saw him. He had evidently been drinking then. I saw him again after that, during the day. He wanted to unload part of his cargo to have temporary repairs made.

Q. What was his condition when you saw him after that?

(Obj. to. Objection sustained.)

I saw the scow as she lay sunken. She was then on the east side of the channel, very much nearer to the Canadian than the island side. I should say she was five-eighths of the width of the channel from the island.

Cross-examined by Mr. Newberry:

Q. Was there not plenty of room between where she was sunken and the Canada bank for the largest steamers to go down easily?

A. I don't think they could go down; they could pass; but I
50 think there would be difficulty in turning between that and the buoy. I merely give that as my judgment. The scow lay across the channel.

Q. With her bow pointing to the Canada shore?

A. I can't say that.

BENONA STEEMBARGE worn on behalf of the libellants.

Examined by Mr. Moore:

I live at Amherstburg; have lived there three years; have been in the vicinity some thirteen years. Last summer I was watchman at Mr. Thomas' mill, which is just a little above the docks. On the morning of the collision between the Free State and the Missel I was sitting on a pile of lumber near the river, at the mill, and I saw the scow a little before she got into the river. I sat there until after the collision, looking at her. The collision took place a little above me. The scow came up under a nice sailing breeze. She appeared to be pretty over on the Canada shore. She had a couple of very nice lights on her—(that was the first I saw of her)—a green light and a red one.
51 After they got above me a piece, the Jay Cooke passed her, in between the scow and the buoy. The Jay Cooke ran pretty close to the buoy. Then this other one came down. Just before they came together, I said to myself there is going to be a collision, and pretty soon they struck. The collision was a little below the buoy, and I couldn't say for certain, but I think it was pretty well towards the Canadian shore from the main channel. When they struck, the propeller looked as if she was coming right to the mill; that is the way the bow looked before they struck. The scow was about a quarter of a mile from me at that time. I judge she had passed up by me. I could see the red can-buoy from the mill; saw it when the Jay Cooke passed it. It was a very nice morning; the moon was shining; there was no difficulty in seeing any distance. There was nothing between them and Bois Blanc when they struck, that I saw.

Q. Did you hear the conversation?

52 A. I did not. I could hear a voice, but not to tell what they said. I saw where the scow sank—saw her when she went down. I think she was more on the Canada side than the other. They floated down quite a piece after they struck, I don't know how far; it appeared as though the propeller held her up. She was fast in her, and when they backed out she sank very quick. I couldn't say how many persons I saw on the scow when she passed me, but I saw one or two anyway. I went out with a boat and got a woman that was hanging to the rigging. I can't say how many were lost, any more than I heard the captain's wife and child were lost. I was at the dock while the propeller was there. It was eight, or nine, or ten o'clock that I was there. I didn't see the captain to be close to him.

Cross-examined by Mr. Brown:

I saw the scow first, then the Jay Cooke, then I saw a light coming down from above.

Q. What sort of a light did you see coming down from above?

53 A. I saw a boat coming down, I mean. I didn't see any light

on her. I saw a boat coming down before they struck; she might have had a light on her, but I didn't see any.

Q. Was it daylight at all?

A. It was just getting break of day. I could see a vessel a good way off. It was a moonshiny night; you could sit on the dock and see them plainly as they came in the mouth of the river. The sun was not up, it was just break of day. You could see the shore all around plain enough; could see Grosse Isle plain enough, and the buoy. I was a little over a quarter of a mile from the buoy. Hackett's dock was below me.

Q. How near did the scow pass to your dock?

A. Pretty well out, pretty near where the common run of vessels go. When I first saw the scow she was just coming in the mouth of the river, hardly coming in. As she came up she showed a green light and
54 a red one; the green light appeared to be on the Canada side, and the red light on the other side; that is the way they looked to me. The Jay Cooke had a number of lights; you could see them all through her in a good many places. She just passed the scow on the Canada side, and between her and the buoy.

Q. Then the scow passed you before the Jay Cooke passed her?

A. Yes, sir; they passed just above the mill, above where I was sitting.

Q. You say the Free State was heading right for where you sat?

A. That is the way it looked to me when she struck. I said to myself there is going to be a collision. It looked as if she came right towards the mill. I could see her almost as plainly as I can see that wall. I saw her quite a piece up the river; saw her before she passed the Jay Cooke; she was heading down the stream then. I heard the Jay Cooke when she blew her whistle, and the other one, too, I think. I couldn't tell exactly how far apart they were when they blew the whistle;
55 it was quite a little piece. They did not pass a great way apart, I think, from the looks of them. I couldn't tell exactly how wide the channel is there, but I should think, from the way boats run, there is considerable width of channel there. I never followed boating, but I have seen a good many run pretty close to Bois Blanc Island.

Capt. CHARLES A. JEX sworn for libellants.

Examined by Mr. Moore:

I will be thirty years old next November; reside at Port Huron; am a sailor; have sailed since 1857, for the last six years as master; sailed three or four seasons as mate; as second mate on the schooner Wallace, an 1,800 bush. grain vessel, and all kinds of vessels almost. Never was in a square-rigged vessel as officer. I was master of the Meisel at the time of her collision with the Free State; that was the third season; she was registered 132 tons, custom-house measurement; she was three years old the May before the collision, in good condition, with
56 canvass in good order; was owned part in Port Huron, part in Saginaw. The libellants, Ludwig, Ortenberger and Eymer, were owners. On that voyage we were bound for East Saginaw. I left *the* Port Erie, stopped at Kelly's Island, and got a load of building-stone for Saginaw; bought them on the owner's acconnt. I had four men forward, mate, myself, and cook; that is what she always carried, and they are plenty to handle her in all weather. I left Kelly's Island on the 16th day of August, I think about five o'clock in the afternoon. I had one extra man that trip, that worked his passage; he was half sailor and half farmer; I had him in addition to the crew. That is all I had aboard except my wife & child. I had taken down from Port

Huron. I passed the Bois Blanc light about twenty minutes past three o'clock, I think. The light is at the mouth of Detroit, foot of Bois Blanc Island. I have sailed all the time between Buffalo and Chicago in these rivers for about six or seven years. I have been sailing through
57 these rivers and to Saginaw. It was my watch as I came past Bois Blanc light. My brother was with me; he was on the look-out as we came past the light, and George Rutherford at the wheel. I came in the river pretty close to the east side of the river; the wind was about west-southwest. Sails on the starboard side. It was a beautiful morning; clear, moonlight, & starlight; no mist nor fog. My lights were in good condition, the best possible condition they could be in. To the best of my knowledge I couldn't have been over two hundred to two hundred and fifty feet from the docks as I came in. I refer to the wood-docks of White & Co.; that is about central part of the docks; the central part of the place, I should think. I think when I first saw the propeller Free State she was about the lime-kilns, just changing her course for Malden.

(Witness describes on the map where the scow was, and where the propeller was.)

At that time I was forward & amidships. After I got into the
58 river I didn't go aft at all; before that I went aft two or three times to see how she headed, for I always get Bois Blanc light to bear in such a position to come into the river. After I get in, I steer altogether by land-marks, for I consider that I know the river well. After I got up so I saw this propeller, I didn't pay much attention to her, but I kept my eye on her. I stood along in close to the shore—so close that when the Jay Cooke came out she had barely room, as I thought, to pass me—so close I could read her name as she passed me on the starboard side; she came out from Malden; as she passed I saw the buoy almost ahead of me, on the starboard side, but very near ahead. I told the man at the wheel to keep her off a little; that was just as soon as the Jay Cooke passed. I stood amidships as she was passing, under the foresail, to take a look at her, to see if she had room enough. I told the man at the wheel to keep her off a little; she swung right off, until I
59 told him to steady. She swung her head to the main-land. I told him to steady her; he did so. At that time I saw the propeller off my port bow wide open; she was not within hailing distance; I should think she was three or four hundred feet ahead of me, and off my port-bow coming down. Before this the Jay Cooke, as she got abreast of me, blew a single whistle, which was one reason for me keeping off. The propeller answered with one whistle. I supposed I could keep in the Jay Cooke's tract, and pass her; after the whistle I watched the propeller; saw the Jay Cooke pass per pretty close aport, and I saw she was pointing right straight for me; as she came a little closer, whoever it was had charge of the deck, (I don't know who it was,) says, "Keep away, God damn you," with something at the end of it. I couldn't make out what it was; there was quite a breeze. I stepped forward and says, "Keep up, captain; you have lots of room there yet for a hundred feet;" but he kept on. I watched him until I saw he was bound
60 to run me down. I stepped to the foresail, I says, "Boys get out of here, we are going to be run down;" with that I ran aft, called my wife and the cook out; went down into the cabin and got them onto the stairs, and got the boat down; she sank then, I think, in three or four minutes; she struck me on the port side, very close to the main rigging; it was not at dead right angle; it was about four points from the port bow. At that time I was heading inside the buoy.

I thought by porting my heading pretty strong I might clear him, and I should have done so if he had done the same thing; it wouldn't have taken half his wheel to throw him clear of us. I was heading inside the buoy when he hailed me to keep out of the way; couldn't change my course any. I would have run aground, probably right on the end of the point. There is a bay in below the buoy; it runs in until you get to the docks, and there you carry deep water; but as you come to the asylum, you have to haul off to port. Immediately before I
61 hailed him, I think I was heading so as just about to clear the buoy. I couldn't say I would have cleared it, but I should have seen it probably. I should think my stem would be probably a little out of the line of the buoy; that was just about the time he hailed me, or just before; when I first ported to follow the stern of the Jay Cooke, I was so close to the channel bank, as I said before, that I was a little doubtful about the Jay Cooke passing me easily, but there being quite a bay there, and the water being a little deeper than it is on the point, he went round me in that way.

Q. When the Jay Cooke passed you, how were you as to the middle of the channel?

A. I was well over on the starboard bank. When the Free *scow* State struck me, I was right inside the range of the buoy; my head was. I wouldn't say about the vessel being all in; my bow was inside. There was nothing to be seen in the river close by except the Free State. My lights were in good condition, burning brightly. I saw this pro-
62 peller coming down the river and I stepped up; it is one of my habits, when I am on deck, to step up forward and look at my lights. I think there is no doubt but you could see a vessel three-quarters of a mile off—see her white hull without any lights even. After striking we sank almost instantly. I ran aft, got the boat down, got in myself, cast off the falls, took the women in, jumped on deck again to save my books and papers, gave orders to shove the boat clear, and wait for me; as I got into my room she took a lurch down, I grabbed the books, threw in the boat, and sprang in myself; but the orders had not been obeyed, or the painter had got fast again; for the painter in going down capsized the boat, & threw my wife and child out. She must have drifted twice her length, probably a couple of hundred feet by the buoy next morning. I should say she drifted down 150 or 200 feet; she sank clear over on the Canada shore, just barely room for a boat to go by her; if she had sunk where she was struck
63 there wouldn't have been room, but in drifting down she drifted out, and increased the distance from shore. She was heading right down to the buoy. I helped to get her up, and took out her cargo myself. When I got the folks out of the cabin, and jumped back on the vessel, he was then fast into me. I says, "Captain, you have done a pretty job now." "God damn you," he says, "why didn't you keep out of the way?" My brother then says, "She is going down fast, capt." I didn't wait then to say any more, went to get my books, spoke these words as I walking; was standing, when she struck me, in the companion-way. Mine is a splendid steering vessel, steers as well as any I have been on, handles easily and well, quick. I was swimming round trying to find my wife, and I saw the Meteor coming down by the wreck; she came down on the starboard side of the river, came round the propeller, and rounded to alongside, I think. I saw her rounding to. The
64 collision was probably not more than 20 or 25 or 30 feet from the buoy. I couldn't say for a few feet, but it was right close to the buoy.

Cross-examined by Mr. Brown:

As master, I have sailed on the schooner Home, the Noble, the Meisel, and the L. D. Comer; sailed on the Comer before the collision. Those are pretty much all of them second-class vessels, or third, they are B1 vessels, none of them very large. The Home will carry about 9,000 bush. of grain. My course by compass from Point up to the entrance of the river was due north; from the entrance to the river up to the collision, (I seldom steer by compass when I get in there,) I should think it was nearly north, or north by east, somewhere along there; when I can't see to run the river by landmarks, I never sail. I kept the shore around after I entered the river—followed the shore pretty
65 much a certain distance off, with the wind a little westward to fill all my sails. I don't have to jibe there. I was pretty close to the Canada shore. I saw the Jay Cooke, when I got up to the docks; had not observed her before, but I am not positive about that, it sometimes runs in my mind she was lying at the dock at Malden, and got under way shortly after I had passed, but I was paying attention to my own vessel; I didn't take a great deal of notice at the docks. When the Jay Cooke passed me, the Free State was probably three or four hundred feet off, it was not less than that; they were *were* about that, I think, when I saw them pass one another, and it must have been more than that when she passed me. I couldn't say how near together they passed. The Jay Cooke was right abreast of me when she blew her first whistle, and was anwered by the Free State. The Jay Cooke had just nice room to pass me right close. I staid to see if there was plenty of room for her to get past. I was running pretty close. I think
66 my vessel in length is one hundred and four feet over all; of course the horn is longer than that; take horn, bowsprit, and all, I couldn't give you the length.

Q. (By Mr. Moore.) If the propeller had kept the course she was on when she passed the Jay Cooke, how would she have passed you?

A. She would have passed me well, clear, on my port-side.

HORATIO JEX sworn on behalf of libellant.

Examined by Mr. Moore:

I live at Port Huron, and am a sailor. My age is *fourteen* years; have sailed six or seven seasons. I am a brother of Capt. Jex, and I was on the Missel at the time of the collision with the Free State; I was on her all that season and the season before that, pretty much. I was before the mast. Am an able seaman. The morning of the collision
67 I was on the captain's watch. I was at the wheel from twelve to two, from two until the time of the collision I was stationed at the lookout, at the forward part of the vessel, at the bow. There was nothing to obstruct my vision forward. From the time I went on watch until the collision I was six or eight feet from the stern. I did not leave the deck. I may have walked two or three feet from where I stood; didn't stand exactly still. The master was at the forward part of the vessel from the time we came in the mouth of the river until the time of the collision. George Rutherford was at the wheel. It was a clear morning, light; I will not be sure the moon was shining; I know the stars were very bright. Opposite Bois Blanc we came up more on the Canada than the American side. As we passed the docks at Amherstburg we were pretty close, about twice the length of the vessel, I guess, or so. When I first saw the propeller Free State, she was up near the lime-
68 kilns, we were just below the red can-buoy, up by Malden, just

by the crazy asylum, or a little below it; we were a little above the docks. We were running right along the Canada bank, not very close to the shore. The water is shoal there, you can't go very close; there is a bay a little below; there was a tug passed us just before we got to the island. There was a steamboat passed us; I didn't know what it was then, they said it was the Jay Cooke. She passed to the leeward pretty close, not more than the length of a vessel, any way. When the Jay Cooke was right abreast of us, the capt. said, "Keep her up a little." The Jay Cooke was pretty close; I suppose he was afraid of getting afoul of her. The Jay Cooke blowed her whistle, she kind of kept off, and we followed right in her wake. The Jay Cooke blew one whistle; she was then right abreast of us inside.

Q. Was there any answer to that?

A. The propeller sounded a whistle, too, of the same kind. I
69 can't tell how far off from us the propeller then was; but I guess about forty or fifty rods. I could see the propeller plainly at that time; if she had kept the course she was then on she would have passed our bow like. We were coming up the bend of the river and she would pass on the port side. The collision took place a very little below the red can-buoy; pretty well to the Canada side as to the channel. It was pretty near about the length of the scow, I guess, below the buoy. After keeping off and following in the wake of the Jay Cooke, we were heading so as to very near clear the buoy going up the river. I suppose we would have to keep up a little more to clear it. The capt. of the propeller said something, I can't tell exactly what. I think he said, "Keep off." Our capt. told him he had lots of room. I think he said a hundred feet, "plenty of room, a hundred feet, or more;" something like that. I don't know what he said now. That is all I heard until after they struck.

She came right down on us, in the main rigging a foot or two
70 forward, & carried away part of the rigging. The scow sank in three or four minutes. The capt. told him he had done it now, or something like that. I was forward when they struck. I was right almost where she hit on the other side of the vessel; it knocked me down there, pretty near amidships. After the signal to the Jay Cooke I didn't hear anything until they struck, then I heard them blowing the signal-whistle of the engine; that was after they struck. I don't think there were any vessels on our port-hand side between us and the head of Bois Blanc Island. I didn't see any. The propeller appeared to be coming pretty fast as she approached.

Q. At the time of this hail to keep away, if the wheel of the propeller had been ported, in your judgment, might she have passed you?

A. If the wheel of the propeller had been ported, she couldn't have helped to pass clear; she had plenty of time, I think.

71 Cross-examined by Mr. Brown:

We passed pretty close to the island, for the river is narrow there; you couldn't help it; we came in about the middle of the river; don't think it was either side. I think the vessel pointed inside the red can-buoy. I saw the Jay Cooke before she came alongside, when she was a little astern. I think she left the dock at Malden.

Q. You say, as I understand you, that just about as the Jay Cooke was passing you the capt. ordered the wheelsman to keep her up a little, so as to give her a little more room.

A. Yes, sir; that would turn the bow to port about a point and a half. That was given when the Jay Cooke was just coming up under our quarter. I think her stern had lapped our stern, but I don't know.

Q. Then the next order was to keep her off?

A. That was after the Cooke passed; just as soon as she got ahead of us. Under the first order to keep her up we swung about be-
72 tween two and three points of the compass, I think. There was another order to keep her off; that was after the propellor came pretty close. Under that order she swung two points more, I guess, or three; that threw her heading pretty well on the Canada shore, inside the red can-buoy, some—I think not much. The first order that was given was an order to keep her up about as the Jay Cooke's stem lapped our stern. She ran under that order until the Jay Cooke passed us, then there was an order to keep her off. She ran under that order until the propellor was a short distance off, when another order was given to keep her off, and she ran under that order until the collision. Under the second order she ran until you could see her pretty close to our port bow, then we kept her off some. The collision was about two minutes after that.

73 Redirect examination:

Q. How close was she after the last order was given to hard aport.

A. About four times the length of the propeller, I think. After she had ported and swung after the Jay Cooke I could see the propeller; if she had kept her course then she couldn't help passing us clear; there was a bend in the river there. When the last order was given to keep her off she was coming down on us, but I did not think there would be a collision. I thought she would port her wheel and keep off.

JAMES BARNS sworn on behalf of the libellants.

Examined by Mr. Moore:

I am 24 years of age; live at Port Huron. My business is sailing; have sailed going on eight years. I was on the scow Missel at the time of the collision with the Free State; had been on her since along
74 in June. I was before the mast, in the mate's watch. I turned in at (12) twelve o'clock. The captain called me out pretty well along towards four o'clock in the morning. I could not tell exactly. He says, "Come, boys, hurry up on deck." The other man, my watch-mate, got ahead of me. I came out after him, looked around, and saw a boat going up ahead of us; I had turned in with my pants and shirt on; came out as I turned in. I was in the forecastle. The vessel I saw ahead of us I afterwards learned was the Jay Cooke. I looked to the weather bow, and saw a propeller coming in 3 or 4 points, I think; between 50 & 100 feet off, I think. She seemed to be coming along pretty lively. I stood there, I suppose, for about a minute, looking to see if she was not going to shift her course. I thought she was going to strike us about the fore rigging, so I ran aft—just got on the quarter, and she struck. We were on the Canada side of the river at that time; I think about the length of the vessel below the buoy. I believe she drifted down some after the collision. I heard somebody on the propeller, I couldn't say who it was, say "God-damn you, why didn't you keep away." It sounded like
75 that, "keep away," or "keep out of the way." I don't remember exactly what day it was. I shipped with Captain Jex this time, but it was along some time about the middle of June, I think.

Cross-examined by Mr. Brown:

I think the Jay Cooke was just about abreast of the Free State when I came upon deck. They passed quite a ways apart. I should think there was a little more than the length of the boat between them.

Q. How far off were they from you?

A. The Free State was 50 or 100 feet from our vessel when I saw her. I heard no orders given after I came up to the wheel. At the time of the collision we were steering right after the Jay Cooke. I couldn't say exactly. I think we were heading pretty well after her. I think from the time I came up until the time of the collision was not more than two minutes.

76 Captain JOHN A. SLOANE sworn on behalf of libellants.

Examined by Mr. Moore:

I reside at Detroit; am a mariner; have sailed nearly 30 years; formerly resided at Malden. I was on what is called the Malden lake-shore route for about 12 years. From red can-buoy to Bois Blanc, I think, the channel of the river is nearly a quarter of a mile wide. I believe it is a little less than half a mile here, & I think it is about half the distance. That is all navigable water. I saw the Missel while she lay sunken. She was on the starboard-hand side coming up, about one-third from the Canada side, across the channel, I think. Probably about 400 feet above the docks.

Cross-examined by Mr. Brown:

I am well acquainted with the river and with the courses.

Q. In your opinion, which side of the river would a vessel naturally take there coming up with a west-southwest wind?

77 (Objected to as improper cross-examination. Objection sustained.)

I don't remember how she was heading as she lay sunken. Couldn't say positively. I should think she was probably three or four times her length below the red can-buoy, & probably two or three hundred feet outside the line of the red can-bouy, though I don't know; it may have been a good deal less. I used to run inside of her. The docks were three or four hundred feet lower. We drew about six feet of water. There was plenty of room to pass on that side. Can't say how propellers usually passed on that side. Coming down I used to stop, and I passed inside always.

Captain THOMAS WILSON sworn on behalf of libellants.

Examined by Mr. Moore:

78 I live here at present. My business is that of a sailor. Have sailed 18 years on all kinds of vessels. Have sailed the propeller Meteor for the last six years. I recollect the morning of the collision between the Free State and the scow Missel. When I was going down, about abreast of the lime kilns I saw something that looked like a vessel's sails. I took my glass, & looked to see what it was. Saw it was a vessel. Immediately the sails disappeared. I couldn't imagine the cause. I kept going on, and when I got down a little above Malden Point, where the red buoy is, I heard some one halloa. I stopped as I came down, and saw what was the matter. I ordered the boat lowered over to see if they could pick any one up. Some one hailed me from the propeller as I kept drifting down, wanted me to come alongside to help them. I passed between the propeller and the island, turned round below the propeller, and while turning was getting my boat over, and when the boat was ready I stopped working and

79 let the boat come near. Then I came up to the propeller. She was lying pretty well with her stem out toward the island. I came close to the stem, and they told me they did not want my help;

they could take care of themselves. I could not tell how much her stem was to the island then. Couldn't say whether she was heading pretty well up or pretty well down. I passed down, ported, & came round between her and the head of Bois Blanc Island, turned round below the propeller, between the island and Malden, and came up toward the propeller. As I came up she was on the Malden side, the starboard side.

Q. How were they as to the middle of the channel; on which side of the channel were they?

A. I think they were a little on the Canada side. This vessel was probably a mile off when I saw her, and her sails disappeared.

Q. Had you seen the propeller?

80 A. No, sir. I did not notice the propeller. I saw some small lights, knew there was something, but I didn't know it was the propeller. I think I passed the Jay Cooke about half way between the head of the island and the lime-kilns, but I am not certain. It was a clear morning.

I waited until my boat came back from the docks at Malden. I did not know until the mate came back what vessel it was. Then I hoisted my boat up, and went on.

Q. (By Mr. Brown.) You will not pretend to say exactly how the propeller was heading?

A. No, sir. She lay with her stem partly out. I came up to her stem, & passed down, then came round & up on her starboard side. I did not pay much attention how she was lying. I did not notice her lights.

Libellants rest.

81 Captain JOSEPH CRIGIN sworn on behalf of the respondent.

Examined by Mr. Brown:

I live in Buffalo; am a sailor, and have sailed upwards of twenty years, eight years and a half as master, about eighteen years as officer. Last season I was on the Free State as master. I recollect the collision with the Missel. I was bound to Buffalo from Chicago; was loaded. I forget exactly when the Free State was built. Her tonage is 949 tons. She was in good condition that trip; full crew. Phillip Findly was mate; George Dissett, second mate; he is a competent man. Wm. Grimue was engineer; he is a good man. Jas. Walch was wheelsman that night; he steers a good trick. Harley Glass & Oliver Comstock were on the lookout that night. At the time of the collision they were stationed on deck forward. We were coming down, I think, at about nine miles an hour. I was up all night on deck coming down the river. I make

82 a practise of being on deck all the way down the river. I saw the Jay Cooke and the Missel about the same time. The lookout reported them to me; at that time I was standing in front of the pilot-house. We were a little below the lime-kilns. I guess when I saw them the Cooke was a little on the port-bow, showing a red light; the scow was very nearly ahead of me, showing a green light; this was after I began to get down about half way between the lime-kilns and the buoy. You change your course to the westward from the lime-kilns to the island. The Cooke signalled me first—one whistle; my answer was one whistle. The Cooke at that time was a little over a quarter of a mile off, I think. I think it is very near a mile from the lime-kilns to the red-can buoy.

Q. At the time you whistled, how did the scow bear?

A. The scow bore very near ahead, a very little on the port bow,

83 showing a green light; she was what you might call just ahead; she was standing about a point and a half across our bows. I could see through between her spars. When we got pretty near the Cooke I told the wheelsman to straighten down the river and leave the vessel on our windward; the vessel naturally goes to windward; she was then a point & a half on the starboard bow; we commenced swinging. I saw the vessel keeping off. I then holloa'd to him to keep your course. I didn't get any reply from the vessel. I saw she kept off still more. I told the wheelsman to put the wheel hard aport; then I jumped on the pilot-house to ring the stopping-bell; then I rang the backing-bell, but she didn't back any; she was right across the bows when we struck; it struck her about this shape, (illustrating.)

84 I didn't get time to swing. I saw nothing but the green light until she showed the red light, and shut the green light in. She was off about twice her length, I suppose, when she shut off the green light.

Q. Did you observe any change of course before she showed her red light?

A. No, sir; I didn't see anything but the green light.

Q. You say the first indication of a change of course was when her lights changed?

A. Yes, sir; she was a point and a half on the starboard bow then; he put his helm up to get across her bows; I stepped as quick as I could to ring the backing-bell.

Q. How soon after this change of light did you give the order to stop and back?

A. Right away; I jumped on the pilot-house and halloa'd up as I went up "hard aport." As soon as the engine was stopped, I rang the backing-bell.

Q. What was your hail to the scow?

A. To keep up and keep his course; my boat was swinging. I

85 knew he couldn't cross my bows. I couldn't swing my boat back to get on the port side of her. I didn't use the words "son-of-a-bitch" or "damned son-of-a-bitch." I struck him about forward of the main rigging, at about this angle, (illustrating.)

Q. Did you see anything that indicated a change of course on his part until his light changed from green to red?

A. No, sir; he appeared to keep up. I could see between the spars—see the canvas plain; could see between the spars at the time he bore a point and a half on our starboard bow. After the collision we got the men on aboard as quick as we could; sent men to lower away the boat. The mate got on the anchor stop, and asked the capt. to pass the women up. I didn't hear the reply, and he halloa'd again, and the men commenced to come aboard my boat. By this time the vessel went

86 down and pulled the small boat under, and the women went under. I halloa'd to my men for God's sake get the boat down and save the women. The capt. got in the water. I guess some one threw the heaving-line; I couldn't say. I was on the pilot-house. Our boat picked the capt. up. The painter being fast, capsized their boat. My boat kind of drifted to. The collision took place pretty near abreast of the red-can buoy. I guess it was as nigh the middle of the channel as could be; my boat was swinging over to straighten down river, and the Missel crossing the bows, and it slewed around some, and naturally drifted towards the Canada shore. I think the Missel was about twice the length of the Propeller off when her light changed from green to red. From the time we came in sight of the vessel I was standing in

front of the pilot-house. The channel between Bois Blanc Island
87 & red-can buoy, I judge, is something less than a quarter of a mile. When I first saw the scow and the Jay Cooke, I think they were about three-quarters of a mile off; I couldn't say exactly.

Q. Had you drank anything that night? If so, how much?

A. I hadn't tasted a drop for four days of anything. I had been up pretty much all the day before and that night.

Q. Did you drink anything that morning before seven o'clock?

A. No, sir—I don't know but I did. I think when we took the capt. into the wood-office to undress him, we gave the capt. some brandy, and Mr. Parks asked me if I would taste some, & I think I took some brandy there.

Q. What was your hail to him?

A. To keep up. I didn't get any reply from him; only I saw he was coming away more. I halloaed to the wheelsman to hard aport, and jumped on the pilot-house to stop the boat. It was about the
88 time the lights were changed that I gave him that hail. I was not at all under the influence of liquor that morning at Malden.

Cross-examined by Mr. Moore:

I passed Detroit that morning, I think, at twenty minutes to two; didn't stop here; forget what time I got into St. Clair River. I crossed the flats at eleven o'clock; was up all night. Phillip Findley was mate. He was familiar with river. He was turning in. He had turned in at ten o'clock. I watched from one o'clock to breakfast-time. This was my watch proper. Geo. Dissett was second mate. He was standing along with me in front of the pilot-house.

Q. Where were you when you first made the scow?

A. Standing in front of the pilot-house. Our vessel was a very little below the lime-kilns; don't remember what our course was there.
89 We were not running by any course. From red can-buoy to the lime-kilns the channel is tolerably wide; pretty straight. After you get below the lime-kilns, you steer straight for the head of the island.

Q. That carries you how much by the buoy?

A. Pretty close sometimes; sometimes closer than others. When you get to the buoy you have to starboard and straighten down the river.

Q. How much?

A. About two points, I think. You change your course at the buoy about two points to starboard. When I first saw the scow the Jay Cooke was just abreast of her, as near as I could judge at that distance. It might have been astern. They were both below the buoy. The Cooke was just ahead of me, showing a red & bright light, and the Missel was over towards the island side, showing a green light on the island side of the Cooke. The Cooke blew one whistle. The scow was
90 just crossing our bows, showing a green light. We were then pretty well down, getting pretty close to the Cooke.

Q. I am talking about when you first made them, when you were by the lime-kilns.

A. Then I saw both green and red lights. When I first saw her she must have been abreast of Malden.

Q. Where were the two when you first saw the scow?

A. They must have been about abreast of Malden. I could not say, but I think the scow was then below the Jay Cooke.

Q. When you say they were abreast, where were you?

A. Pretty well down towards the buoy.

Q. A moment ago you said the Cooke and the scow were both below the buoy and you saw the red and bright light of the Cooke and the green light of the scow crossing your course. Where were you at that time?

A. I was then above the buoy, probably a quarter of a mile,
91 but at that time she was showing all the lights. I gave no order at that time. The first order I gave was starboard. That was about as I was passing the Cooke. The Cooke was probably the length of the boat or so—it might have been twice the length of the boat—and above the buoy. I guess it could not have been three times the length of the boat.

Q. How much did you starboard at that time?

A. She probably swung a point; but we did not run under that order at all, because the vessel then changed her course. The next order I gave was, "hard aport." We were then pretty close to the buoy; probably three or four times the length of the boat above. I was outside the buoy, about the middle of the channel.

Q. What effect did that order of "hard aport" at that time?

A. It just about steadied my boat until we struck the vessel. When I gave the order to starboard, we swung, but didn't run any. Then I gave the other order, and she just about got steadied, and struck. Im-
92 mediately after I gave the order to starboard I gave the order, "hard aport." She was then three or four lengths above the buoy and above the middle of the channel. When I gave the order "hard aport," I was going up on the pilot-house. It was about 8 feet up on the pilot-house; just around the pilot-house, and up on the steps. I was on the hurricane-deck forward of the pilot-house, & went up about 8 feet on the pilot-house. When I got up there I stopped the boat by ringing the *whistle* to stop. We were then coming pretty close to the scow, about twice the length of the scow, about 400 feet.

Q. You then pulled the bell to stop?

A. Yes, sir; then I rang the bell to back.

Q. How are those bells rung?

A. Two signals. I waited until I felt the engine stop before I rang to back. When I rang the bell to back the vessel had not yet hit. I suppose her headway was checked a little, but I suppose not much. I could not tell how much. When I gave the order "hard aport," the scow was on my starboard bow, standing right across my bow. When she struck the scow, it was about the middle of the channel, and
93 then it naturally drifted over towards the Canada shore.

Q. Did she stop your headway any?

A. I suppose so.

Q. How much; didn't you carry her down the river a little?

A. Yes, sir; I suppose our momentum was much greater than theirs.

Q. Which way would the current carry you from that red buoy ordinarily, if you were out in the middle of the channel opposite that red buoy?

A. In towards the Malden docks.

Q. If you were in the middle of the channel?

A. Yes, sir.

Q. If you were close to that red buoy, which way would it be likely to carry you?

A. Probably straight down the river, & get you in the middle of the channel. The current naturally follows the bank down there; the bank curves in below the buoy considerable. There is quite a little bay

there. The lookout jumped on deck to go to the wheel. I did not order him to do it. He frequently did that when in close quarters. He
94 did that when I halloaed "hard aport." That was when she was right on us.

Q. Up to that time he was on main deck?

A. Up to the time he reported the lights. The other lookout, Oliver Comstock, was in bed; he went to bed at one o'clock. When I said in my direct examination that I had two lookout men, I meant I carried two lookouts. The morning was clear, starlight and moonlight. I always stay up all night going down the river. I hadn't taken anything for four days; don't know as I did then. I turned in the day before until along about dinner time, from eight o'clock in the morning. I was then coming down Lake Huron. I must have got to the river sometime in the evening. I wooded above, took about two hours to wood at 's lower dock; didn't touch again after that until the time of the collision. When the capt. was being undressed I took a little brandy; couldn't say how long I was there before I drank. I think I took a drink or two during the day after that.

95 Q. You do sometimes take a drink or two?

A. Not very often. It does not affect me. I don't know that I was ever under the influence of liquor. I sailed the Free State 3 years; sailed her the next trip.

Q. Did you have another collision the next time you went down?

(Objected to. Objection sustained.)

I did not tell him to get out of the way, or use profane language; I halloaed to him to keep up, to keep his course. I don't often use profane language. Most any man does once in a while.

Q. Don't you use it when you are excited?

A. Not often.

Q. Aren't you in such a habit of using it that when you are excited you use it and not know it?

A. Not so bad as that. I was not much excited that morning. When I went up on the pilot-house I went as quickly as I could; I went to avoid a collision; but a man may not be excited when he is in a hurry.

96 Q. You never use profane language without knowing it?

A. I know it most of the time. I don't use it very frequently. I have said G—d-damn it; don't use it very frequently.

Q. Do you ever, when you have taken anything, say it?

A. No, sir; I never take enough.

Q. Two or three drinks don't affect you?

A. No, sir; it's very seldom I take two or three drinks, though.

Q. Will one good drink excite you at all?

A. No, sir. After I got to Malden I was not very much excited; I may have been a little excited. I was tired; I had been up all night.

Q. Do you always take a little something in the morning, after you have been up all night?

A. No, sir. All I said to him was to "keep up," & the next remark, I hallooed to the second mate to get that boat down & save the
97 women. That was the only remark I made to the captain. I heard the mate speak to him about getting the women out; what reply the captain made I can't say. I was on the top of the pilot-house all the time.

Q. You say when you gave the order to starboard you could see the green light of the scow dead ahead of you?

A. She was a little on the starboard bow then.

Q. Didn't you say a little on the port bow?
A. No, sir, not when I ordered starboard.
Q. If you came down there and only changed your heading a point, where would your heading carry you?
A. It would carry me a little below the head of the island.
Q. She was across your bow. How?
A. About 3 or 4 points across our bows. When she showed her green light she was about a point and a half across my starboard bow.
Q. Then she must have been about the middle of the island?
A. About the middle of the channel; very near at the head of the island.
98 (Witness here referred to a diagram, & points out the relative positions of the two vessels.)
Q. You gave the order to starboard one point?
A. I didn't state how much to starboard; I merely said starboard.
Q. She swung a point, then you gave the order hard aport?
A. The vessel changed her course, showed her red light, and I gave the order hard aport. That was immediately before we struck.

Redirect examination by Mr. Brown:

We had our lights up that night—the red, white, and green. There was no light touched after I got on the pilot-house until I came off of it.
Q. How long did you run under the order to starboard before you gave the order to "hard aport?"
A. It was only a minute; I couldn't say how many lengths of the boat I ran; probably two or three. She swung about a point
99 during that time. The second mate took the lookout's place when he went into the wheel-house. We lay around the Missel after the collision probably half an hour or more, until we got the folks picked up.

Recross:

I had got alongside of the dock when Captain Jex got ashore.

GEORGE DISSETT sworn on behalf of the respondent.

Examined by Mr. Brown:

I am 31 years of age; am a sailor; have sailed about 14 years; (I live in Chicago;) steamboating and sailing. This is my third season as officer of a steamboat; was on the Free State last year as second mate; recollect the collision between the Free State and Missel. I went on deck that night at one o'clock; a little after one. I forget exactly where that was. It was somewhere in the vicinity of Detroit. Before
100 the collision I was standing forward of the pilot-house. The captain was standing forward alongside of me. I was just about lime-kilns when I first saw the Missel. I saw the scow before I saw the Jay Cooke. She was showing a green light then. Immediately after I saw the Jay Cooke coming up; she was well over on the Canadian shore. She was showing a red light. I think she was showing both her lights, but I will not be positive as to that. About half past one o'clock I called the watchman; had the lights trimmed. I usually look at the lights every half hour or so. There was no light hoisted after the collision; nothing of that kind. When I first saw the scow her green light was about a point on our starboard bow, but as we came along the river it was about a point and a half, when we blew our whistle. We blew our whistle. The Jay Cooke was then a little leeward, just ahead of the scow. I think the Jay Cooke blew her whistle first.

101 Q. Any order given to the wheelsman at that time?

A. Yes, sir; the captain told him to starboard his wheel; to go between the Jay Cooke and the scow. The Jay Cooke was then a little forward of the scow, just to leeward, pretty well over towards the Canada shore; so we could not go between her and the Canada shore. The scow opened her green light about a point & a half.

Q. What was the first change you noticed in the scow, if any?

(Objected to.)

Q. What was done?

A. After we starboarded our wheel we were swinging to port, and they put their helm up. She steered right across the river then, and her light changed. She opened her red light then. There was no apparent change in the vessel before she opened her red light. That was the first I discovered.

Q. Could you see the spars of the scow?

A. Yes; I could see her foremast after she kept away. I could see both her spars then.

102 Q. What order was given by your captain, if any, to the wheel or engine at the time she changed her green to red?

A. He ordered the helm aport.

Q. Do you know what order he gave to the engine?

A. He rang the bell to stop her and back.

Q. How far off was the scow at the time he gave the order to port, and also when he gave orders to the engine?

A. About a length and a half, I suppose, when he rang the bell to stop, and before that perhaps about two lengths. I heard orders given to the engine. He rang the bell to stop her in the first place, and then to back her. I heard the bell.

Q. What is your signal to the engine?

A. A whistle. Sometimes we had a bell, sometimes a whistle. At the time these orders were given to the engine the scow was off about the length of the steamboat. Under the order to port, the vessel swung about three points. She was swinging under the starboard order when the port order was given. We struck her

103 with the stem a little forward of the main rigging. The place was just below the red can-buoy. The scow at that time I think was nearer to the Canadian than to the American shore. I heard no hail from the propeller to the scow.

(Witness illustrates the angle at which they struck.)

WITNESS. I wish to make a correction. Before dinner I stated she swung under her port helm about 2½ or three points; she could not have swung that much, because we would head on the head of the scow, and she was passing us at the time, and we would not have struck her at all; had we swung half that much we would have gone clear altogether, and her passing at the time made it appear to me as though she had swung that much, but she did not by considerable. I heard the capt. hail the scow and tell them to keep her up. Our whistle was blown for the steamer Jay Cooke. I never blew a whistle for a sail-vessel;

104 never seen it done. I should place the collision just below the red buoy, probably 30 or 40 feet; if anything, it was nearer the Canadian; it was almost in the centre of the channel. When we struck she naturally winded us round, and our force coming down would shove her into the Canadian shore further. After we picked Capt. Jeks up in the boat he wished to know why we blew one whistle and then starboarded the wheel. I don't remember the words exactly, but that was what he meant to get at. I told him we didn't blow for him. Says I,

"Didn't you see that steamboat coming up?" He says, "No." Says I, "The steamboat came to the leeward of you, and I blew it for the steamboat." The scow, at the time I blew the whistle, was too close to the island for us to go between the island and her, so all we could do was to go between the two. The reason he gave for porting was, he thought the whistle was intended for him, and he put his helm up and kept her away.

105 Cross-examined:

When I came on deck the boat was in the vicinity of Detroit; I think below here probably four or five miles; I don't recollect exactly. When I came on deck I went forward of the pilot-house. When I first saw the scow we were down a little below the lime-kilns, probably a mile or a mile and a half above the red buoy. We were going down about the centre of the channel; don't know exactly what our heading was; we were steering by landmarks; I didn't see the compass.

Q. Had you a bell-rope in front of the pilot-house?

A. We had a whistle-rope made fast to the stairway, just abaft the pilot-house; could not touch it from forward of the pilot-house, but I could come and take hold of the rope, standing beside it. That is not the engine-signal; we can't connect with the engine-signal from
106 the inside of the pilot-house. We were a little below the lime-kilns when we made the scow; she was then bearing probably a point on our starboard bow. We were heading right down the channel. The red can-buoy was on our port bow, perhaps half a point or three-quarters. The first time I saw the Jay Cooke, to pay attention to her, was just as she was coming up under the quarter of the scow; I should say about 200 or 250 feet from her. I saw a red light on the Cooke; I am not sure but I seen both. I saw her red light and saw her head-light, if I saw both the red and the green lights. The red light was a good deal the most open. At that time the scow appeared to be heading well clear of us, toward the island.

Q. Across your course.

A. No, sir; heading clear up the river.

Q. Right towards you?

A. No, sir; she would have gone clear of us. She was about a
107 point on the starboard bow; she was heading up the river and we were coming down; it was not right opposite. I could not see both lights. She was below the upper end of the island; I could not say how much; I should think about midway of the island, or a little better than midway; she would be about two points or 2½ to the starboard of the buoy. We were at this time less than a quarter of a mile above the red buoy, going pretty rapidly; full head on. The first order given was to starboard the wheel. I am not sure whether it was before blowing the whistle for the steamboat or immediately afterward that the order was given to starboard. I think it was before. I should think that under that order she swung about three-quarters of a point or a half; about half a point. The order hard aport was what stopped her from swinging; she probably swung a point under the star-
108 board order, then the order was given hard aport.

Q. She then commenced swinging to the starboard?

A. She didn't immediately, but as soon as she would mind her wheel; she was a pretty fair vessel to mind her wheel; there are vessels will answer quicker than she will, but you could handle her as quick as the generality. When this order was given to port, hard aport, we were nearer the Canadian side of the channel. When I gave the order to

port, about as near as we could get to the Canadian channel; I didn't look to see the buoy. I could not tell how close we were, because I went into the pilot-house to assist in putting the wheel to port. The lookout was at the wheel too; he was on the hurricane-deck; we were both on the hurricane-deck. When this order was given hard aport the Jay Cooke was passing us; probably not more than past us; just about
109 past. The scow was then off perhaps a length and a half of ourselves away, or a length. After the order hard aport, she may not have swung to the starboard at all before we hit, and she may have gone half a point. I was not in a position to determine. The first my attention was called to the fact I made a mistake in saying she swung 2½ to 3 points. After I left the stand Capt. Far asked me if I thought she had swung that much. Neither Capt. Creaky nor Mr. Brown called my attention to it. Mr. Brown did not suggest that I better correct that; I didn't know that I had any right to correct it; but I saw I was in error, and I didn't want to make a mistake upon oath.

Q. You saw you had made a good deal of a mistake.

A. Yes, sir.

Q. Capt. Far is considered the chief captain of the line?

A. Yes, sir.

Q. And a very good capt. he is too?

110 A. I think so; I think the collision took place about 30 or 40 feet below the red can-buoy, on the Canada side; if anything it was very near the centre of the channel. While giving the order starboard, and then hard aport, there was perhaps half a minute of time, perhaps not so long; & from the time the order was given port and then hard aport perhaps not so long as that; the scow had shut in her green light, and showed the red light, and was heading right across our bows.

Q. What was it Capt. Jeks said to you?

A. He wanted to know why we blew our whistle and then starboarded our wheel, and kept over to the Canadian shore; and I asked him if he didn't see the steamboat to the leeward of him. He said no. I told him I blew the whistle for the steamboat, and he said he thought the whistle was for him, and he put his helm up and kept away. When I blew
111 this whistle the Jay Cooke was coming up under her quarter, or nearly abreast of her when I blew the whistle.

Q. He said he hadn't seen the Jay Cooke?

A. Yes. I had this conversation with Jeks after I picked him up, shortly after taking him out of the water. We were going to the wreck a short time after. He was pretty nearly gone. We had not gone ashore before. I forget whether it was going up or coming down from the wreck.

Redirect:

The scow was showing the green light at the time of the order to starboard. She did not continue to show the green light until the order hard aport. She was showing the red light when we got the order to port.

Q. Did she show the green light until the order to port?

A. No, sir; she kept away immediately after I blew the whistle.

Q. How soon after she showed the red light did he give the order to port?

A. Just immediately after, when he seen she was keeping away.

112 WM. LIVINGSTONE, Jr., sworn:

I am agent of the Western Transportation Company in this city

They are the owners of the propeller Free State. I am acquainted with Capt. Criqui; have been personally acquainted with him the past year, 1870; have seen him very frequently. He was constantly running between Buffalo and Chicago the past season, and I saw him every trip or two; sometimes both going up and coming down.

Q. Did you ever see him under the influence of liquor?

A. No, sir.

(Obj. to.)

Q. I will ask Mr. Livingstone what his reputation is with regard to sobriety.

(Obj. to, as his reputation has not been attacked.)

HARLEY GLASS sworn:

I reside in Erie County, State of New York; was a sailor last summer; was on the propeller Free State last season; recollect the collision
113 between the propeller Free State and the Meisel. When I first saw her I was on the promenade-deck as lookout-man. I saw both the scow Meisel and the Jay Cook about the same time, and reported them. I reported them to the second mate, and he said "All right; he saw them." I saw a green light on the starboard bow. I saw the red light of the Cooke. They bore on our port bow. At the time I first saw them, I should think the scow was a little ahead when I first saw the light. The first order I heard given after I saw them was starboard a bit. I heard a whistle. The order was given after the whistle. The Jay Cooke might have been within 20 rods of us then, perhaps. We passed her within three or four boat's length. I heard no more orders until I saw a change of lights on the scow. The scow showed a red light, and we had orders to port. The scow's green light was
114 about a point and a half on the starboard bow when I first noticed the change. When the light changed the order was given to port; then hard aport. Just after that he blowed for stopping and backing; nothing more to the wheel. Those orders were given right along, one after another. The scow did not appear to be more than four or five lengths off when she changed her light; I should think about that. We struck her, I should think, about that angle, (illustrating.) We were a little on the Canada side of the river, I should think, when we struck; very little below the red buoy. I heard a hail from our vessel to the other just about the time she changed lights. Our capt. halloaed for them to keep up. I didn't hear him swear any.

Cross-ex.:

Last season was the first season I sailed. I went out on the Free State the first trip in the spring in the capacity of deck-hand;
115 had never sailed before. My duties when I first went on were handling freight. I was not much of a navigator; first stood as lookout the third trip; think this collision took place in August; can't say what trip that was. It took about two weeks to make the round trip. I was on the promenade-deck when we made the scow. Forward of the cabin on the promenade-deck there is considerable room. There was nobody there with me.

Q. Who was on the hurricane-deck?

A. The capt. and second mate; no one else. A man named Walsh was at the wheel. When we made the scow we were nearer to the Canada shore. We were then, perhaps, half a mile above the red buoy. We made the green light of the scow about a point on the starboard bow, and the Jay Cooke. When we first made her perhaps a point and

a half over our port bow; can't say how the buoy bore at that time. I didn't pay any attention to it. We were a little nearer the
116 Canada shore, I think. I noticed Bois Blanc Island; could see the scow and her light without difficulty. We were about 10 rods above the buoy when the whistle was blown in answer to the Jay Cooke's whistle; I don't think over that. The Jay Cooke was then on our port bow, not very close to us. When our whistle was blown the scow was on the starboard bow.

Q. How far was she [you] from the Jay Cooke, do you think?

A. Ten rods, perhaps.

Q. You were about 10 rods from her?

A. From the Cooke? Yes, sir; the scow was down the river, not a great ways. The Jay Cooke and the propeller were not side by side when we blew the whistle. I think the Jay Cooke was a little up the river from us. The order to starboard had been given then, or about that time. The captain gave the order. No one else gave any orders to the wheel. The next order was when she showed her red light.
117 We got orders to port, then hard aport. The two orders were given as quick as they could be. Says he: "Port! hard aport!" like that. It was all virtually one order. She would not swing a great deal the other way before we struck; that is, under the port order.

Q. Had she got round, swinging so as to be heading right down the river, or was she heading in towards shore?

A. I don't think she was heading much to shore; she might have been a little; could not have been over a point. The scow was heading pretty near across our bows. When the order was given "Port! hard aport!" the scow was about five or six lengths off—not over ten rods, I don't think.

Q. You said she was about ten rods off when the whistle was blown?

A. No; the Jay Cooke. When the order was given, "Port! hard aport!" the Jay Cooke was very near abreast of us; we were, perhaps, five boat-lengths from her.

Q. If she was abreast of you, how far off was she on your port-hand?

118 A. Not over three or four boat-lengths. The master of the propeller hailed the master of the scow, and told him to keep up; that was all the hail I heard. I heard no answer to the hail. Don't know that I heard the captain swear at that time; sometimes he swears, but I am certain he didn't that time.

Redirect:

Our lights were burning. I noticed them. There was no bright light hoisted after the collision.

GLASS recalled.

(Moore.) Did you go to the wheel before the collision?

A. Yes, sir; the second mate ordered me.

Q. (Brown.) Whom did you leave on lookout?

A. The second mate.

Q. (Mr. Moore.) Did the second mate go to the wheel before the collision?

A. He had one hand through the window.

119 OLIVER COMSTOCK sworn.

Reside in Buffalo; my business is sailing; have sailed about 14 years; was on the Free State at the time of the collision with the Meisel;

turned in about half past one that night. What brought me out—I heard the captain holloa. I was asleep and heard the noise, and knew there was something wrong. He said "Keep his luff, keep up." I saw the scow on the starboard bow when I ran out. I saw the green light first; in a very little while she shut in the green light and showed the red light; she was then right across our bows. The capt. holloaed, "hard aport!" the first thing I heard him say, then he stopped her—she was about the length of herself off from the scow—stopped, and run to back; then the collision occurred. I was standing right in the eyes of the prop.
120 when she struck. I should think when I first went out she was off about twice or a little over the length of the propeller off. The green light I should say was a good point on the starboard bow when we struck; we had just got swinging a little to the starboard; we took her in forward of the main rigging. I think we had just got on the swing. We were a little toward the Canada side when we struck. As soon as we got into her, the mate sung out to me to get the boat ready. I got the boat over the rail, and lowered her away. There was only one of our boats lowered away.

Cross-ex.:

I think I was asleep when I heard the hail to the scow. He holloaed very loud; I think it woke me up. I don't know how many times he hollered before I heard him; I know the first yell I heard I jumped out. I din't hear any profane language used; everything was quiet,
121 only he told him to keep his luff, or keep up. I then went out on deck; it was just almost daylight. I could see the rails of the vessel, her hull. I could see her bulwarks; could see her plain. I should think she was as near as from here to the other corner of the room when I saw her, and coming like this to us, and I heard the captain say, "Keep your luff, keep up," and I could see his green light. All at once he opened his red light, and ran across our bow. When I first went out I could see her heading for us, coming kind of quartering. I could see her plain; could look between her masts when she was coming up like this.

Q. Did you notice her lights with reference to her heading, so as to post yourself with reference to her heading, or how did you happen to notice?

A. Yes sir; it is my business to look always to see if I can see a light.

122 Redirect:

I notice the lights on the Free State after we picked up the captain; she rounded to and we ran our boat under the bows of the propeller, and her lights were all burning good; they burned until 8 o'clock in the morning before we took them down. I heard a conversation between Capt. Jecks and the second mate of the propeller with regard to the collision, coming back from the wreck. After we picked the captain up, we went back to the wreck to see if we could see his wife, and, coming back, he asked our second mate "What did you blow that one whistle for?" Says the second mate, Didn't you see that steamer to the leeward of you? He said No; he took that whistle for him, and he kept away on that account. That was all the conversation I heard, and I stood right alongside the captain.

Q. (Mr. Moore.) This is the captain, is it?

123 A. Yes; that is the man we pulled out of the river; supposed to be the captain.

FRANK B. HACKETT sworn for libellant.

I live in Amherstburg. My business is a mariner; have sailed between five and six years. I was master of the tug Prince Alfred in August last; recollect the morning of the collision. I saw the Measel pass by my tug. I should judge my tug was about ⅛ of a mile below the red buoy. The river there is between 1,100 and 1,200 feet from dock to shore.

Q. From the Malden dock; from the red buoy to the head of the island it would be about the same distance, I should judge. I should judge the whole width of the river at the head of the island to be between 1,200 and 1,300 feet from shore to shore; above the head of the island across it is over a mile, I should judge. When the scow
124 Measel went by our tug I was standing on deck. I sent our engineer down to get steam up; we thought the Measel would want towing up, and we expected to hail it.

Q. How did she pass up the channel by your tug?

A. I should judge a quarter of the distance across to the island from the dock. I should judge she was heading about for the can-buoy; if anything, a little inside, I should judge. She sunk on the starboard hand; the collision must have taken place abreast of the can-buoy, for when she sunk she was 400 or 500 feet, I should judge, below it; it was a little outside of the range of the can-buoy, where she sunk; a little outside, very little. The collision, I should say, took place a little outside of the buoy.

No cross.

125 ALBERT HARRYMAN sworn:

My business is sea-faring man; have sailed about 35 years on the lakes here. In August last I was on the steamer Jay Cooke, as mate. I recollect the morning of the collision between the Free State and the scow Measel. At that time I was just above the buoy. I left the scow Measel on my port hand; I went within from 40 to 50 feet of her. I think she was what you might call pretty close on to the Canada side; she didn't occupy more than one-third of the channel, perhaps not that. I blew one whistle to the propeller; I was just astern of the scow at that time. When I passed her she was heading just about square up channel; immediately after passing her, to me it seemed as though she ported her wheel, and was standing in toward us to come in under our stern, as I supposed. The Free State at that time was some
126 20 rods up the river, or more, above me. I should think I passed within perhaps from 400 to 500 feet; I think she was coming down about the middle of the channel. When the Free State was abreast of us the scow was heading toward us; as we were heading so, the scow was heading in that way towards us, as near as I could judge. I think the scow was on the Canada side of the channel at that time; don't know that there was any other vessel but the Free State off at our port hand or below us.

Cross:

Q. (Mr. Newberry.) Then the Measel you speak of heading towards you quartering, about how many points off your port quarter was she two, or three, or four, or what?

A. I don't think she was one or more.

Q. At the time of passing the Free State you said you saw her heading quartering.

127 A. In towards us.

Q. If she was coming somewhere like that, (illustrating,) that would be two or three points off your port quarter?

A. I don't think she would be as much as two or three points in straightening up to go around the buoy; there is only a point and a half difference, anyway.

Q. I am only trying to get at the way you put your hands.

A. They might show different to you than to me. I say in that direction she was heading in inclined towards us.

Q. Further up river?

A. Yes, sir; because I passed her on the inside. I saw the red can-buoy plain enough when I went by the scow. I don't know whether the wheel *list* it or not—the starboard wheel. I went outside the buoy—the channel side, of course—and very close to it.

Redirect:

When I saw her heading in astern of us I saw both her lights.

128 The propeller Free State, when she was heading in towards us, was nearly abreast of us.

Q. (By Mr. Brown.) Did you notice the Free State's lights?

A. I did. They were all right; as good as any propeller ever had.

Capt. JE'KS recalled:

I never said to the mate, Mr. , that I didn't see the Jay Cooke, and I thought the whistle was for me, because I saw the Jay Cooke plain, as one of my men testified. I kept up a little, to give him a chance to clear the bow, so I could not tell that without telling a falsehood, and I know I would not at that time.

No cross.

129 At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district-court room, in Detroit, on Tuesday, the eighteenth day of July, in the year of our Lord one thousand eight hundred and seventy-one.

Present, the honorable John W. Longyear, district judge.

AUGUSTUS F. LUDWIG, ERNEST ORTENBERGER, & Andrew Eymer,
vs.
PROPELLER FREE STATES, HER ENGINES, &C. } On a libe' for collision. In admiralty.

This cause having been heretofore heard and submitted to the court for judgment, and the court having taken time to consider of its decree therein, and having maturely weighed the pleadings and proofs and the arguments of counsel submitted therein, and due deliberation being had,

it is now by the court ordered, adjudged, and decreed that the

130 said libellant do recover of and from the said propeller Free State and from the claimants in this cause one moiety of their damages sustained on occasion of the collision set forth in the libel filed in this cause; and it is ordered that it be referred to the clerk of this court as a commissioner to take proofs concerning, and to ascertain the amount of said damages, and to report the same to this court, together with the proofs so taken, with all convenient speed.

131 In the district court of the United States for the eastern district of Michigan, ss.—In admiralty.

IN THE CASE OF A. F. LUDWIG ET AL., LIBELLANTS,
vs.
THE PROPELLER FREE STATE, HER BOATS, &c.

To the honor'ble John W. Longyear, judge of the said court:

It having been, by a decree of said court made and entered in said cause, referred to the undersigned, a commissioner of said court, to ascertain, compute, and determine the damages sustained by the said libellants on occasion of the collision of the propeller Free State with their scow Meisell, to take such testimony as might be offered in relation thereto, and to report such damages so ascertained to said court; and the undersigned having carefully examined the testimony taken on behalf of the libellant and the respondent, and having heard & maturely considered the arguments submitted by counsel for said parties, respectively in reference to said damages, doth now report:

132 First. That there is due to said libellants, A. F. Ludwig et al., on account of the damages sustained by the said scow Meisell, on occasion of the collision of said scow with the propeller Free State, the sums following, to wit:

No. voucher.		
1.	For raising scow & delivering her at dry-dock, as per contract, exclusive of lightening cargo	$1,200 00
2.	Knill & Co., dockage on cargo & sails, at Malden	25 00
4.	M. Desperdey, keeping lights on wreck, 24 nights	36 00
5.	Laborers, getting out cargo at Malden	21 52
6.	Steamer Dove, freight on spars & sails to Detroit	20 00
7 & 8.	Barges Cornet & Relief, lightening stone, 7 days each	210 00
9 & 10.	Use of small lighter, $15; tug Prince Albert, towing lighters, $50	65 00
	Carried over	1,577 52
No. voucher.		
11.	T. B. Hackett, stripping wreck & saving sails & spars	65 00
12.	Schooner J. G. Kalsage, 6 days' service at Detroit	150 00
13.	Scow Morgan, 3 " " " "	45 00
14.	Tug Clara, tak'g steam-pump from Detroit to vessel, & return, and handling same	30 00
15.	A. H. Mills, towing scows & timber, $7 & $5	12 00
16.	John Quinn, diving 3 days, at $30, $90; labor, 3 days, at $5, 15; cartage, $2	107 00
17.	Phœnix Insurance Co., use of steam-pump, 2 days	80 00
18.	Night service of engineer steam-pump, $15.00 & $2.40	17 40
19.	2 tons coal for said pump	15 00
20.	Lumber & nails, & use of screws, block, & toggles	30 54
133 No. vouchers.		
21.	George Irving, services superin'd'g work, 5 days, at $5	25 00
22.	Paid laborers at Detroit	43 72
23, 24, 25.	Telegrams to Malden, $\frac{77}{100}$; surveyor's 3 fees, $30; protest, $5; telegram, $5.05	40 82
26.	Labor in lightening cargo at Malden	32 39
29.	Capt 's expenses to & at Detroit for assistance to raise vessel	9 75
31.	Repairs on sails, rigging, & furniture outfit to replace loss	1,294 21
32.	Damages to hull by collision, Oades & Morris survey	3,312 00
33.	Value of nett earnings of scow while sunk & while repairing, 58 days, (August 17th to Oct. 15th,) at $18.44 a day, (see Jex's second dep'n, fol. 7.) Nett earnings of scow April 29th to Aug. 10, 1870, were $1,900	1,069 52

	34. Wages of crew while vessel was sunk & repair'g, being 58 days:			
	Capt. Jex, 43 days, at $4.17		179 01	
	S. Benton, mate, 58 days, at $2.00		116 00	
	Geo. Rutherford, seaman, 58 days, at $1.50		87 00	
	James Barnes, " " "		87 00	
	Carried over		$469 01	$7,956 87
Voucher.	Brought over		469 01	7,956 87
	A. Cockley, seaman, 20 days, at $1.50		30 00	
	Horatio Jex, 15 " " "		22 50	
	4 men, each 3½ days, at $1.50, $21; deducting $9.50 as per dep'n of Capt. Jex, leaves balance of		11 50	
	Cook, 11 days, at $1.50		16 50	
	A. Martin, 12 days, at $1.50		18 00	
	A. Dove, 6 " "		9 00	
	Ed. Parsons, 6 " "		9 00	
	Total wages			585 51
134	Voucher.			
	35. Board of men while employed in repairs, 316 days, at 75c			237 00
	36. Loss of cargo of 17 cords of stone, at $8			136 00
	Total amount of ascertained damages			8,915 38
	Add interest from Oct. 20th, 1870, being 5 days after repairs were completed, to April 20th, 1872, date of report 1 year 6 months			936 11
	Total amount reported as due libellant			9,851 49

II. I have declined to allow the following items claimed by the libellant, but unsupported by or contradicted by the proofs:

Voucher.			
5.	Amount paid James Barnes, (included also in Voucher 34)		16 75
26.	Do. " " " " " " " "		8 00
26.	" S. H. Benton, " " " " "		54 00
3.	Board of laborers at Malden, " " " " "		52 00
37.	Charge for cash lost on wreck, not sustained by evidence		140 00
28.	Board of men at Malden		25 50
27.	Labor at Detroit, no voucher filed and no explanation or statement of chg's		46 50
34.	Deduct $9.50 as double charge, item 4 men, each 3½ days, at $1.50, $21; Capt. Jex reduces it to $11.50 instead; also deduct from Capt's wages, 15 days, at $4.17, $52.55, while absent from illness		72 05
	Disallowances carried over		414 80
	" brought "		" "
33.	In charge of $20 as nett earnings, I allow but $18.44, that being amount stated as her nett earnings in Jex's second dep'n, folio 1, as explained above; difference disallowed by comm'r		90 48
30.	Deduct this charge for reloading cargo at Malden, because capt., mate, and crew were all under pay, and should have done this work themselves		6 94
	Total amount of disallowances		512 22

135 III. I have added for error in libellant's statement of voucher No. 31, "repairs on sails, &c.," the sum of $20, being $1,294.21 instead of $1,274.21, the first sum being the amount correctly stated in voucher.

I herewith file the testimony taken and the e'hibit filed by both of the parties to said cause.

All of which is respectfully submitted.

Detroit, April 20th, 1872.

(Signed) WM. D. WILKINS,
U. S. Commissioner E. Dist. Michigan.

U. S. COMR. OFFICE OF E. D. MICH., *April* 20, '72.

U. S. Commissioner's fees on above matter of reference.

Draftg. report 17 f., $3.40; copy do., $1.70; takg. depn. 36 fol., $7.20	$12 30
Swearg. 8 witnesses, 80c.; filg., markg. & numberg. 41 exhibits, @ 10c., $4.10	4 90
1871, Oct. 7 & 10, Sept. 11; 1872, March 16, April 13, 16, & 19; attending as commr. under order of reference 7 days, @ $3.	21 00
Total Commr. Wilkins' fees	$38 20

Amounts paid by Messrs. Brown & Moore to notaries and stenographers for taking depositions, unknown.

136 Since closing above report libellants' proctors have handed me the Voucher No. 27, referred to therein as disallowed, because no voucher was filed, or explanation or statement given. The two first items thereof are admitted to be charged elsewhere. The balance of nineteen $\frac{50}{100}$ dollars is now reported as due $19 50
And interest for 1 year & 6 months 2 05

Additional amt. reported as due	$25 55
Add amt. reported due as above	9,851 49
Total amount with above addition	$9,873 04

(Signed) WM. D. WILKINS,
Comm'r.

(Endorsed:) Filed June 17th, 1872. D. J. Davison, clerk.

137 No. 1.

[Inter. rev. 2 c.]

DETROIT, MICH., *Sept.* 12, 1870.

Received of Detroit Fire Marine Ins. Co., three hundred dollars on ⅜c. $300.00.

Contract Scow Meisel.

(Signed) PERRY & NEWTON.

No. 1½.

[Stamp.]

DETROIT, MICH., *Sept.* 13, 1870.

Received of Detroit Fire & Marine Ins. Company, nine hundred dollars in full balance contract scow Meisel. $900.00.

(Signed) PERRY & NEWTON.

107.43, Newton's order; 10, tug; 782.57, check—900.00.

AMHERSTBURG, *Sept. 26th*, 1870.

Scow Meisell to Kevill & Co.

Sept. 26.	To dockage on sails & booms	$10 00
" " "	limestone	15 00
		$25 00

Received payment.

(Signed) KEVILL & CO.

[U. S. 2 c. I. R. S.]

138 No. 3.

AMHERSTBURG, *Sept.* 23, '70.

Received of Captain C. A. Jex, for boarding men at work on wreck of C. G. Meisel, the sum of $52.00 for 13 weeks' board @ $4.00 per week. $52.00.

Received payment.

(Signed) ELLIS BROWN.

No. 4.

AMHERSTBURG, *Sept. 12th*, 1870.

Scow Meisel to Wm. Desherden, Dr.

To tending & furnishing lighter on wreck 24 nights, $1.50 per night, American cu'y, $36.00.

The above bill is correct.

Rec'd payment.

I certify that the above bill is correct.

Rec'd payment.

(Signed) MICHAEL DESHERDEN.

Capt. CHARLES A. JEX,
Scow Meisel.

139 No. 5.

CLARK'S DRY-DOCK, *Sept.* 27, '70.

Scow Meisel, Dr., to James Barnes, sailor.

To 16 days ½ labor, @ $1.50 per day	$24 75
By cash paid, $8.00	8 00
	16 75

[$16.75.] Capt. CHARLES A. JEX.

Received payment.

(Signed) JAMES BARNES.

No. 72.

DETROIT, *Sept. 22nd*, 1870.

Schr. C. G. Meisel, Dr., to Samuel Cokely.

To 15¾ days' labor, @ $1.50 per day	$23 62½
By cash paid	2 10
	21 52

Capt. CHARLES A. JEX.

J. NICHOLSON, 5¾ days.

Rec'd payment.

(Signed) SAML COKELY.
J. NICHOLSON.

140 No. 6.

AMHERSTBURY, *Sept. 16th*, 1870.

Shipped in good order by Keville & Co., for account and risk of whom it may concern, on board the str. Dove, whereby J. S. Sloane is master, now lying in the port of , and bound for , the following articles, to be delivered in like good order at the port of destination, (the dangers of navigation, fire, collisions, and breakage of canals only excepted,) unto the consignee named in the margin or to assigns.

In witness whereof the master of said vessel hath affirmed bills of lading, all of this tenor and date, one of which being accomplished, the other to stand void.

Schr. Meisel, Detroit.

Booms, gaffs, &c..... $20 00

Received payment.
(Signed) G. W. ALEXANDER.

141 No. 7, 8, 9, 10, & 11.

AMHERSTBURG, *Sept. 27th*, 1870.

Scow C. J. Meisel to F. B. Hackett, Dr.

To use of Comet 7 days, @ $15.00 per day.....	$105 00
" " " Relief 7 " " " " "	105 00
Stripping wreck " " " " "	75 00
Use of tug Prince Alfred.....	50 00
" " small lighter	15 00
	$350 00

[U. S. I. R.]

Received, Detroit, Sept. 30th, 1870, three hundred & forty dollars.
$340.00.] F. B. HACKETT.
P. MONAGHAN.

105, 7; 105, 8; 15, 9; 50, 10; 65, 11—340.00.

$150.00.] No. 12.

Pay Schr. J. G. Rolfage, on order of owner, one hundred and fifty dollars for six days, @ $25 per day, at scow C. G. Meisel.
(Signed) JOS. NICHOLSON.

[Int. r.]

DETROIT, *Sept.* 22, 1870.

To DETROIT F. & M. In. Co., *Detroit.*

JOHN L. JONES,
Owner Schr. J. G. Colfage.

142 No.—

C. G. Meisel to Scow Morgan Malden, Dr.

To 3 days' service, @ $15 per day..... $45 00

(Signed) VICTOR RAMAH.

No. 14.

DETROIT, MICH., *Sept. 20th*, 1870.

Scow Meisel to tug Clara.

For towing from Copper dock & delay & handling pump to and from Detroit, thirty dollars..... $30 00

Correct.
Received payment.
(Signed) N. H. MILLS, *Collector.*
, *Master.*

[U. S. I. rev. 2 c.]

No. 15.

DETROIT, MICH., *Sept. 17th*, 1870.

[Stamp.]

Scow Morgan to tug Urania, Dr.

For towing from Detroit to Copper dock, 5 dollars..... $5 00

Received payment.
, *Master.*
Correct:
(Signed) N. H. MILLS, *Collector.*

143 No.

[Stamp.]

Schr. Colfag to Tug Huron, Dr.

For towing from Copper dock to Clark's dry-dock, and timber, seven dollars..... $7 00

Received payment.
(Signed) N. H. MILLS, *Collector.*

Correct: , *Master.*

No.

Scow C. G. Meisel to John Quinn, Dr.

To 3 days' diving, @ $30.00 per day.....	$90 00
" " service, " $5.00.....	15 00
Cartage.....	4 50
Paid Simons.....	2 00
	$111 50
Received pay't Oct. 5th, '70.....	4 50
	107 00

JOHN QUINN.

144 No. 17 & 18.

Detroit Ins. Co., on account of scow C. G. Meisel, to L. B. Fertin, agt. Phœnix Ins. Co., Buffalo, Dr.

To use of 12-in. wrecking pump 2 days, @ $40.00 per day.....	$80 00
To 1½ galls. lard oil.....	2 40
To two nights' extra work engineer, $7.50 per night.....	15 00
	$97 40

Detroit, Sept. 23d, 1870.

Received payment.
(Signed) L. B. FERTIN & CO.,
Per A. MENYN,
Engineer.

[U. S. i. r. sta'p.]

No. 19.

DETROIT, *Mich., Sept.* 19, 1870.

Detroit Fire Marine Ins. Co. bought of Viger Brothers, dealers in coal & pig iron, office & yard foot of Randolph street, Lehigh, Scranton, Lackawan'a, Blossburgh, Briarhill, Mt. Carbon, Ormsby, Willow Bank, Mas'il'on, Screening.

2 tuns lump B. Hill, $7.50..... $15 00

Received payment.
(Signed) VIGER BROTHERS.

Scow Meisel taken by str. Clara (Herons) for pump.

145 No.

Scow C. G. Meisel to Jno. P. Clark, Dr.

For lumber, nails, & use of screws, blocks, & toggles..... $30 54

Received payment in full.

J. P. CLARK.
W. B. MUIR.

No.

Scow C. G. Meisels to Jno. P. Clark.

'70.

Sept. 22ed,	for use of	6	screws & blocks 6 days, @ $3.20	$13 50
"	"	"	245 ft. deck plank, 4.....	10 02
	"	"	120 boards, 41	5 12
	"	"	5 lb. spike, 7.....	35
	"		5 nails, 7	35
	"		4 toggles 6 days, 5	1 20
				$30 54

Detroit, Sept. 26, 1870

No.

Scow Meisel to Geo. Irving, Dr.

'70.
Sept. 26, to 5 days' service, $5 ..... $25 00

Received payment.
(Signed) GEORGE IRVING.

146 No. 22.

SPRINGWELLS, *Sept. 24th*, 1870.

Capt. Nicholson, Dr. to A. F. Jenks.

For board for men employed on the scow Meisel:
Meals, 204, @ 30c $61 20
40 120 overcharge 20 00

9 weeks & 5 days, 4½ per week, $43.72 ..... 41 20

Received, Oct. 20th, $43.65.
(Signed) A. F. JENKS.

No. 24.

DETROIT, MICH., *Sept.* 30, 1870.

Received of the Detroit F. & M. Ins. Co. thirty dollars in full for three surveyors' fees on sch. C. G. Meisel $30 00

(Signed) E. MAYES.

No. 26.

Paid Samuel H. Beaton 27 days' labor, @ $2 ..... $54 00
William Gerard, labor 3½ days 5 04
Michael Tracey, labor 5 75
" " 13 days' labor 19 50
James Bains 8 00
S. Conkley 2 10

94 39

147 No.

Captain Jakes to Mrs. Webber, Dr.

To breakfasting 3 men ..... $ 75

Received.
(Signed) JAMES WEBBER.
Amherstburg, 17th August, 1870.

No. 28.

AMHERSTBURG, ONTARIO, *Aug. 25th*, 1870.

Received of Capt. Jex $24.75 for board for self and men at time of shipwreck $24 75
(Signed) ELLIS BROWN.

In the district court of the U. S. for the eastern district of Michigan.
In admiralty.

LUDWIG ET AL
vs.
FREE STATE.

STATE & EAST DIST. OF MICH.,
Wayne County, ss:

CHARLES A. JEX, having been by me duly sworn to tell the truth, the whole truth, and nothing but the truth, in reply to questions that should be put to him relative to law-suit, Wm. A. Moore, esq're, appearing on behalf of said libellant, and H. B. Brown appearing for respondent, said as follows:

148 *Jex in behalf of libellants.*

(Examined by Mr. Moore.)

I was master of the Meisel. I have looked over the account, (account produced, and marked "Exhibit A,") and I find it to be correct.

Item No. 1, paid for raising the vessel as per voucher No. 1; for item No. 2, voucher No. 2 is produced; for item No. 3, voucher No. 3 filed; for item No. 4, voucher No. 4 filed; for item No. 5, voucher No. 5 filed; for item No. 6, voucher No. 6 filed; for item No. 7, 8, 9, 10, & 11, vouchers filed; for item 12, voucher 12 filed; for item 13, voucher filed; for item 14, voucher filed; for item 15, voucher filed; for item 16, voucher filed; for items 17 & 18; voucher for 19 is filed; for item 20, voucher filed; for item 21, voucher filed; for item 22, voucher filed; for item 23, telegram to Malden, no voucher. I sent the telegram referred to.

For item 24, voucher filed; for item 25, no voucher filed; it is
149 for protest, & I paid him, Mr. Templeton, at Amherstburg, $5.00.

I have no voucher for the telegram charges. They include five or six telegrams, and I paid the money. For item 26, no voucher produced. The charge therein is not included in any other bill, and was paid. For item No. 27, voucher filed; No. 27 also for item 28; for item No. 29, no voucher produced, but I paid out the money at the time; all of it was necessary, and were caused by the collision; item No. 30, no voucher; I paid the amount of cash charges at the time; for item No. 31, voucher produced. The articles mentioned in the statement herewith filed were lost at the time of the collision. There were other things lost besides these, which were not marked down. (Statement referred to, marked "Exhibit B," filed herewith.) All of the articles in that statement have not been replaced; some of them have. So far as they have been replaced, the estimate (Exhibit B) is low, with a few

exceptions. In most cases I have paid more than estimated. That
150 estimate was based as to value as the prices of the same in Wilcox's store. I had some of the bills which I got when she was fitted out, and gave them to Mr. Mays to look at. The principal articles I have purchased are mattrasses, for which I paid the same price as in the statement B. Blankets cost me $2½ per pair more than the price named in Exhibit B; window-curtains double what appears in statement B; bed-tick, quilts, and such like were put on at a very low estimate.

(The above testimony as to estimates objected to as incompetent.)

There is a hand-saw, that means a buck-saw, in the statement B, and a couple or three more quilts named in the statement that was not

in the cabin at the time of the collision; that is all. With these exceptions everything named in statement B was on the scow at the time. The scow was in prime condition at the time; could not have been better; she was 3 years, 3 months old at the time.

Q. What was the cost of her outfit when she came out?

151 (Objected to as irrelevant.)

A. To the best of my memory, I had the bills. It was 4,400 and odd dollars. That comprises just our outfit. It had nothing to do with the cabin at all.

Q. What was the damage to the hull by the collision?

(Objected to that it is not shown witness is an expert.)

A. I cannot tell you that—I don't pretend to be ship-carpenter—bad damages though.

Q. How long was she stopped by reason of the collision?

A. From 17th Aug., 4 o'clock in the morning, until 15th Oct. at noon.

Q. What was the effect of the collision *on* the time?

A. It was to cut her from the decks to the bottom side-timber and deck-beams—split them both. Her stem went in about 1½ foot on deck. There is a covering-board, a foot & three deck plank, about 15 inches. That would make upwards of 2 feet; sank her almost instantly.

152 She was sunken somewhere about 24 days; that she was sunk before she was raised the first time. She was raised just as soon as the stone could be got out of her and raised. The Insurance Co. & I used all possible dispatch. She was repaired as soon as it was possible to get it done.

Q. What was her time worth a day while she was delayed?

Examination adjourned, to be resumed 7th inst., at 8.30 a. m.:

A. According to what the amount of the trips. We were making some $45 to $48 per day, earnings. That was her daily earnings. This had been from the time I started out, 3 months and 9 days. Her expenses per day were about $15.00, at the least calculation. My wages figure $4.17 per diem; mate's wages, over $60.00 per month, $2.00 per day. We carried 4 other men & the cook. They were Geo. Rutherford, 12s. per day; James Barnes, 12s.; Samuel Cokely, 12s.; & Horation Jex, 12s. There was the steward besides. To board these

153 men cost, aboard the boat, $4.00 per day, or 75 c. per man. I was accustomed to figure the cost at that. In port, when the vessel was detained, part of the time I had not the full crew to victual.

Witness shown a paper and asked: State whether the statement of the men employed and paid while the vessel was detained on account of the collision is a true statement.

An. Yes, sir; that is correct.

Q. State whether or not any part of the cargo was lost by the collision.

A. 17 cords of stone. I bought 40 cords, and delivered 23 cords, worth per cord $10.00, in Saginaw. When I bought it it was worth $4.75 on the dock. Freight was $4.00 to Detroit. When lost it was worth $8 per cord, I should think. The stone belonged to the owners of the scow. Mr. Ludwig was the principal owner. There was about $143.00 lost by that collision. At the time of the accident the money was in my desk in a collar-box. It was in bills—national currency & greenbacks;

154 can't say what proportion. That collar-box also was half full of silver and nickels, which was also lost, but the amount of which I have no means of knowing. The money belonged to the schooner, to the owners. I don't know why I didn't save it. I had more than I

could do to save myself, and did not pay much attention to it. The last I saw of it was when I went into the cabin for my books, and I cannot say whether I got any of it then or not. I think I must, because some of the nickles were found on the deck of the vessel after she was raised. There was none of the $143.00 saved—not a cent.

Cross-examined by Mr. Brown:

1. My contract with Perry & Newton was not made by me. I understood from Mr. Clark what it was. I know of my own knowledge what Perry & Newton were to have. Mr. Clark sent for me while I was there to tell me. I understood the scow was to be raised and delivered at Clark's dry-dock for $1,200. I was to light the stone off of her. Their divers were to load them with buckets at the bottom of the vessel. We should hoist them out and take care of them. It was a part of the contract that they were to load them into buckets. There was nothing said about the delivery of sails and rigging at the dry-dock.

(2.) The bill of Keville & Co., No. 2, was paid by me. The limestone was stowed on the dock till the 1st day of December; the sails and boom were there from about the 10th Aug., and remained there until about the 2nd of October. I sold the limestone in Sarnia; I carried them from Malden to Sarnia in December; I had no sale for them and did not take them away before.

(3.) The men referred to in this charge were working on the stone getting it ashore. I don't remember exactly how many men we had at work—myself and mate, & 4 men. I couldn't say exactly how long they work'; I was taken sick before they got through; it was over 2 weeks.

(4.) The wreck was sunk 24 or 25 days, 24 nights; the wreck was sunk until she got here; she was not at the bottom but she was full of water.

(5.) James Barnes was working on the wreck at Clark's dry-dock, also at Malden, taking out stone, handling the lighters, &c.; raising the vessel at Detroit.

(5½.) Samuel Cokely was one of the sailors, and doing the same as Barnes. I gave these men an order to go to the company for part of their money and part of it I paid myself. I paid this money for getting out the stone; the balance of the time after she got into dock we paid ourselves. This is all for wages earned before she went into dry-dock.

(7, 8, 9, 10, 11.) The Cornet and Relief were used for the purpose of hoisting a derrick on them and lighten the stone out & put it on shore. The Prince Alfred was used for towing lighters.

(12.) The schooner Colfage was used by the company for the purpose of lightening the vessel up and bringing her to Detroit. Voucher No. 12 was the one of the vessel getting her to the dock after she sunk the second time, or rather slid off the vessel after we got to Detroit.

(13.) The scow Morgan was used for raising the scow at Springwells, and getting her so that we could pump her out.

(14.) Tug Clara was for taking the pump from Detroit to Springwells, towing the scow Meazel to dry dock, putting the pump back aboard again, and bringing it to Detroit after getting into dock. We towed her to Clark's dry-dock when we came first up the river; we could not get her into the dock, when we lowered her to copper dock, where she remained about one week, when she was again lowered to Clark's dry-dock.

(15.) Is for towing scow Malden from Detroit to copper dock.

(16.) Quinn's diving was done at Springwells, at copper dock; was down there to lower her to Clark's dry-dock.

(17 & 18.) That was for the use of a steam-pump for pumping her out at the copper dock after she was raised.

(Page 14.) Coal was for the steam-pump at copper dock and also at the dry-dock; we had to buy more one night before we got on.

(20 & 20½.) These bills of Clark *is* for materials furnished in raising her at the copper dock.

(21.) George Irvine was overseeing the work of raising her at copper dock in place of Capt. Nicholson.

(22.) This bill for board was for sailors and extra men employed
159 at the copper dock, screwing & raising her up. I think there were some 4 or 5 beside our own crew; I guess there were 6 besides myself, mate, and 4 sailors.

(24.) These surveyors were employed to estimate the loss sustained by the collision: John Oades, ship-carpenter, Detroit; William Morris, foreman of Clarke's dry-dock, and Ed. Mayo, sailmaker & rigger, Detroit.

(26.) This charge is for money paid out at the time of the raising, outside the company's pay.

(28.) The board for self and men at the time of the wreck was for time before we commenced to raise her.

Qu. How does that differ from No. 3, which was a charge for board of men at same time?

An. The 1st bill was paid before the raising; the next one was after we begun to take stone out of her.

160 (29.) This was my expenses coming back & forward to the company, taking men down, and so on.

(31.) Q. Where are your bills for repairs on sails & rigging?

An. I haven't got any bills on them at all. I did most of the work myself. We have the bills for the fixing of the sails. I guess Mr. Ludwig has them. I can't say that I know how much has been paid for repairs on sails & rigging and furniture.

(32.) Q. Where are your bills for repairs on hull?

A. The repairs are not all made yet; the bills that have been made for that purpose I have not myself. I cannot tell that. I do not know how much has been paid for repairs on our side.

(33.) Q. Have you any books showing your net earnings for the season of 1870, prior to the collision?

A. I have, & they are at Port Huron.

(Mr. Brown states that he wishes these books produced.)

161 Q. Can you have them here?

Witness. Yes, sir. I would have brought them if I had thought of it.

(34.) Q. How were you paid, by the season, day, or month?

A. By the season.

Q. The mate?

A. By the month.

Q. Was he paid his full wages while the vessel was out of commission?

A. Yes, sir, he was; I have his receipt on the books.

Q. Can you produce your books here?

A. I can. They are in the same books I referred to before.

Q. How was George Rutherford paid?

A. By the day. He was employed all the time the vessel was out of commission; he never left her at all; he was at work raising stone, get-

ting up the vessel, fitting her, and after she was up getting her ready for sea. While she was being repaired in the dry-dock he was engaged fitting her up, mending the rigging, working with the carpen-
162 ter, and so on. He was actually paid the $87.00 named; I paid it myself, and took his receipt.

Q. What did James Barnes do?

A. The same work. I paid Barnes that $87.00—that is, less the amount paid on these bills. The amount paid him by voucher 5 should be deducted, also some other little items, to wit, the $8.00 charged on voucher 26. The $54.00 charged in voucher 26 as paid to Samuel H. Beaton should be deducted from the $116.00 charged in voucher 34. There is a deduction should be made from the $87.00 charged Rutherford. do not know exactly the amount.

Q. As to S. Cokely, what was he doing?

A. He was working on the wreck the same as the rest of them, taking out stone & fitting up 20 days. The amount charged as paid to him in voucher 26 should not be deducted. All the remainder of these men charged in voucher 34 were engaged in fitting up the vessel, raising her. Horatio Jerx was a sailor on the vessel, and engaged in tak-
163 ing up stone. The charge of men 3½ days each were employed; I cannot at present say how. The cook wasn't on but 2 days or three; she was not doing much; I paid her & took her receipt; she came aboard again on the 7th of Oct. Martin, Davis, & Powers were employed at Port Huron mending sails, clearing up gear, and general seamen's work.

(35.) Q. Where is your voucher for No. 35?

A. All the voucher I have for that is the fact that it would cost that much if they had been on the vessel.

Q. Did you pay the board at Clark's dock and Port Huron?

A. I did. I paid their board all the time, and the amount I have charged as paid them was over and above their board. This charge, I cannot say, comprises all the board, for all the time, but I think it does.

Q. Then, if it does, vouchers 3 & 22 should be deducted.

A. Voucher 3 should be deducted. 22 was outside of our own
164 crew. I actually paid this board, as near as I could figure it, as the worth of so many days' board for so many men. I do not know that the amount is just what was paid. I paid $4 at Detroit; same at Port Huron.

(37.) This $140 was in a collar-box, in a corner of my desk, in the cabin. My desk was found after the collision. I looked in the desk for the money. I did not find the collar-box; desk was not empty when recovered; found some paper and envelopes. I took the money out of the desk before she sunk. I don't know what I did with it. I must have taken the money out of the desk, and brought it up on deck. It was in a collar-box, with some small silver coins and nickels, and a large silver ring. The ring and some of the nickels was found on deck after the vessel was raised.

(35.) Voucher No. 28 should be deducted from charge (35.)

165 (34.) There is a double charge on two men, George Rutherford and James Barns; in that portion the item No. 34, to wit, 4 men, each 3½ days, $21. So this should be reduced to $11.50.

Redirect:

She was employed all that summer, up to the time of collision. About all, or nearly all, the repairs to the rigging has been done. About $200 more would finish it. About ⅔rds, I would say, of the repairs to the

hull has been made. The owners felt a little weak, and asked me to try and run her all the season without all repairs being made.

(Signed) CHARLES A. JEX.

Oct. 7th, 1871.

W. D. WILKINS,
U. S. Com'n'r East. Dist. Mich.

166 *Oades on behalf of libellant.*

JOHN OADES:

I live in Detroit. I am a ship-carpenter; have been here most 7 years; have a ship-yard of my own; saw the scow Meisel in the summer of '70, after the collision; saw her in Clark's dry-dock. I examined her with regard to the repairs necessary to be made on her. William Morris also examined her with me. I think I examined her as carefully as I do any other wreck of the kind. She was in pretty bad shape.

Q. State what Exhibit 32 is.

A. It is a survey of the vessel, showing what it would take to repair the vessel, and leave her in as good a state as she was in prior to the collision, to the best of my knowledge, by items.

Q. State whether, in your opinion, the estimate of repairs included anything that was not made necessary by the collision.

167 An. The estimates of damages we made out was, as I should judge, what was necessary to make good the damages by the collision.

Qu. What was the amount of those necessary repairs at that time?

An. $3,312.00 at that time.

Qu. Who else was with you in that estimate?

An. William Moore.

Q. What was the condition of the vessel as to soundness apart from the damages?

An. She was in pretty good shape, I should judge; I think she was sound; am pretty sure she was; it was difficult to judge; she was all ver mud.

Cross-examined:

That estimate was all confined to the hull; she was cut through and badly treated.

Q. What would you judge that scow worth before the collision?

A. $6,500 to $7,000, I should judge; I guess she might be that; but it is very hard for me to say; never saw her before, and don't

168 know the size of her very well; she might have been worth more or less.

Redirect.

I don't know what her worth was; I just went down and made the estimate as fast as I could, and came away. As she lay in dock she was worth $2,500 or $2,800 *dollars.*

(Signed) JOHN OADES.

Sworn and subscribed before me Oct. 7th, 1871.

WM. D. WILKINS,
U. S. Commr. East. Dist. of Michigan.

A. F. Ludwig on behalf of libellant.

AUGUST F. LUDWIG:

I am one of the libellants, and one of the owners of the scow; she was in her fourth year at the time of this collision.

Q. What did she cost?

(Question objected to as irrelevant and incompetent.)

169 A. I judge pretty near $13,000, or a little over; I can show the bills, the actual cost; it might be under $13,000 or a little over. At the time of the collision she was worth at least $10,000, at the least calculation. (This amount objected to by proctor for respondent.) We were offered $11,000 for her the spring before, but we would not accept it. Her gross earnings were worth a day, the season she was lost, up to the time of the collision, as far as I know from the books, $45, $47, to $48 *dollars*, as near as I can recollect.

Q. What were her net earnings for the season before '69?

(Question objected to.)

Ans. He got in some 38 or 39 100$, & out of that he paid the insurance; out of that money paid very little of the expenses and outfit that year.

Cross-examined by Mr. Brown:

I couldn't tell exactly what my net earnings for the season of '70, on account of the interruption by the wreck.

(Signed) AUGUSTUS LUDWIG.

170 Sworn and subscribed to before me Oct. 7th, 1871.

WM. D. WILKINS,
U. S. Commissioner.

Witness CHARLES A. JEX, recalled and examined by Mr. Moore:

Witness here produces the books of the scow G. G. Meisel, and states from the said books, and from his own recollection of the fact, that the nett earnings of the said scow paid over by witness to owners from April 29th to August 10th as follows, viz:

To Mr. Eymer, one of the owners	$520 00
To Mr. Ludwig, another owner	1,070 00
To cash on hand to meet expenses	310 00
	$1,900 00

That I paid all the bills which the boat contracted during that time; that the gross earnings of the boat for that season, up to the time of collision, was fifty-two hundred, and thirty-one $\frac{33}{100}$ dollars, ($5,231.33.) That said vessel commenced running April 25th, and that the collision occurred August 17th. During the season, up to the time of col-

171 lision, the said vessel was laid up four days. From about the first of August until the close of the season freights were better than in the fore part of the season.

Ques. What were the gross earnings of the scow for the season of 1869, and what were her expenses?

(Objected to by Mr. Brown as immaterial.)

An. They were ten thousand four hundred and eighty-eight $\frac{27}{100}$, ($10,488.27.) From when we first commenced running, April 15th, to Nov. the 18th, her expenses during that period were sixty-three hundred and sixty-one $\frac{49}{100}$ dollars, ($6,361.43.)

Qu. What were the gross earnings of said scow for the season of 1868, and what were her expenses?

(Objected to by Mr. Brown as immaterial.)

A. From April 13th, 1858, to Nov. 26th, 1868, the gross earnings were $11,719.97. The expenses for same period were $7,054.53. That

included all her expenses, with the exception of insurance. The gross earnings for the season of 1870 were given up to the time of the
172 receipt of the load in Erie. The gross expenses of the same period were $3,155.89.

(Signed) CHARLES A. JEX.

Sworn & subscribed before me Sept. 11th, 1871.

WM. D. WILKINS,
U. S. Comm'r East. Dist. Mich.

EDWARD MAYES, being duly sworn in above matter, deposes and says:

I am one of the firm of Hoffner and Mayes, sail-makers and riggers, of Detroit. I have been connected with this firm eight years, and have worked at the business twenty-five years, off and on. I have known the scow Meisel, seeing her pass up and down the river; was first on board of her when called to hold a survey. I made a survey of her damages after collision with the prop. Free State; went aboard of her in Clark's dry-dock; went carefully over her, made a minute of
173 what was left on board and of what was needed. The paper produced is the minute I made, and refers to paper No. 31 of the schedule of damages, and is marked No. 31. We set down the articles which were not there, and which the vessel would require to put her in a seaworthy condition again, and we marked what we thought was the value against such article.

Cross-exam.:

I have had no experience in estimating damages on hulls. The sails and rigging are all I can swear to. I did not supply the Meisel with sails and rigging, and I don't know whether the estimate would overrun or underrun what was actually furnished. I confined my estimate on the refitting the standing rigging, which was claimed to have been damaged, not for a new outfit of standing rigging. I cannot state positively just what was there.

Qu. Did you estimate the cost of difference between old & new, or for an entire new rigging?

174 All estimates was based on new, for what was *was* lost, & on repairs for what it would cost to repai*r* it. I did not deduct the value of the old rigging from my estimates; that is always left to the adjuster.

Qu. From the estimates on this piece of paper there should be deducted the value of the old sails and rigging, should there not?

An. I can't recollect distinctly what there was about old, it is so long since. The first item of Manilla rope was entirely lost & cut. All these items on the first page were items that were totally lost, and could only be replaced by items as good as new, as the vessel was but three years old. On the other page everything that was damaged, & was to be replaced or repaired, is itemized. My estimate as to forecastle furniture and cabin furniture was based on information received from Wilcox. I confined myself to sails & rigging. I only know as to damage to such articles as on first page, by stepping down to
175 Wilcox and enquiring the price from him. Everything in shape of mattrasses, blankets, pillow-cases, sheets, &c., were lost.

Re-direct:

I make principally all the estimates of damages on vessels fetched to this city. I am familiar with prices of outfits of vessels of that class.

The outfit of this vessel (though a scow) would compare with that of any vessel afloat, what was left of it.

Ques. Are you familiar with cost of the outfit of sail vessels?

Ans. Yes, sir; I am.

Ques. When you say all you know about it is by going down and asking Wilcox, do you not mean that you did so for the purpose of ascertaining the current price, at the time, of those articles?

(Objected to as leading.)

An. Of course; there is no other way of getting at those prices than by enquiring where they keep them for sale, which was at Trowbridge and Wilcox's.

Qu. Was there anything in that list which was not required to
176 make her fit-out apparently as complete as it was before collision?

Ans. Not anything in that list but what a vessel would require. Whether she had them or not, is a different thing.

Qu. State whether or not that statement presents the articles to be purchased new, & the repairs of such articles as should be repaired at the fair cash price in this market.

(Objected to as leading.)

Ans. It does, as far as my memory serves me at present time. It was based on the cost of such articles in Detroit, at their cash valuation at the time. We are put the question, "What will you furnish the articles in the bill of repairs for?"

Recross-exam.:

Qu. Do you know, of your own knowledge, how many articles in that schedule the boat had already?

Ans. No. We have no means of knowing whether they were lost or not.

Redirect.:

Ques. Were those articles, on which you estimate repairs to be made, there and shown to you?

177 Yes; of course; we could not estimate otherwise. We make a survey and estimate in this manner: we go on board, ask for the captain; ask him to show all that is damaged and requires repairs; then ask for a minute of what he claims is lost, and caution him at the same time that he has to pay for one-half of the new work, and that he must swear everything through that he claims has been lost.

(Signed) EDWARD MAYES.

Sworn and subscribed before me Oct. 10th, 1871.

WM. D. WILKINS,
U. S. Commissioner East. Dist. Mich.

WILLIAM MORRIS, being duly sworn, deposes and says:

Live in Detroit; am a ship-carpenter. (Admitted to be an expert as a ship-carpenter.) I examined and made a survey of the scow Meisel immediately after the collision with the Free State. It is an estimate of the damages done by collision, and what was necessary to make her as good as she was before, and contains an estimate of the items of repairs necessary to be made, as near as we could get at it by experienced
178 men. (Paper filed, and marked "No. 32.") I was then foreman of Clark's dry-dock. She was then perfectly sound, and in not more than her fourth year. Such repairs as were made were put on as soon as she was in the dock, and as many men were put on her as could work to advantage.

Cross-examined:

Qu. Do you know whether the repairs put on her were more or less than the estimate of the said items?

An. We did not finish her repairs. I cannot say positively.

Ques. Do you know the amount of the repairs you did put on her?

Ans. I think I can find out?

Qu. Did you confine yourself in this estimate strictly to the damages caused by the collision?

Ans. Yes, sir.

(Signed) WILLIAM MORRIS.

Sworn to and subscribed to before me Oct. 10th, 1871.

WM. D. WILKINS,
U. S. Comm'r East. Dist. Mich.

179 (Copy.)

Scow C. G. Meisel to John P. Clark.

1870.

Sept. 21.	For dockage	$75 00
	" forging 57 lbs. bolts, 1s	7 13
Oct. 4.	For 607 lbs. iron, 6	36 42
	" 392 " spike, 7	27 44
	" 2,797 ft. oak lumber, 4½	125 87
	" 132¾ days carpenters & caulkers, $3	398 25
	" 3 " foreman, $5	15 00
	" 2½ bales oakum, $7	17 50
	" ¾ bbls. pitch, $7	5 25
	" 1 pitch mop	50
	" 4 lbs. lead, 12c	48
	" cartage of anchor	1 00
	Rep'g chain plates & bolts	50
		$710 34

{ U. S. COMM'R SEAL. MR'H 16, '72. } Detroit Oct. 4th, 1870. Exhibit 35.

180 (Copy.)

Scow C. G. Meisel to the Unio' Dry-Dock Co.

1871.

June 29.	To 2½ days caulkers, 3.50	$8 75	
	" 15 oakum, 13	1 95	
			$10 70
Aug. 4.	To 4 spike, 8	32	
	" ½ day foreman, $5.00	2 50	
	" 5 " carp. & caulkers, 3.50	17 50	
	" 15 " mixed paint, 18	2 70	
	" 5 " tallow, 15	75	
	" 30 " oakum, 13	3 90	
	" 16 ft. oak, 5	80	
	" 1 seam brush	25	
	" wooden wedges	1 00	
	Docking in No. 2 dock	12 00	
			$41 72

{ U. S. COM'R SEAL. M'R'H 16, '72. } Exhibit 36. Pd.

181 (Copy.)

C. G. Meisel to E. Fitzgerald.

OCT. 6TH, '71.

To 101 ft. oak, 4c	$4 04
" 25 lbs. spike, 10c	2 50
" 33 ft. decking	1 62
" 6 lbs. iron	42
" 4 days labor	12 00
" foreman ½ day	2 50
	$22 78

{ U. S. COMN'R SEAL. MR'H 16, '72. E. D. M. } Exhibit 37.

TOLEDO, OHIO, *May* 23, 1871.

Scow Mislew to Jenison & Rogers, Dr.

[Ship.] Ship-carpenters and caulkers' shop, 57 Atwater street:

1¾ days' calking, 24s 5 25

{ U. S. COMM'R SEAL. MR'H 16TH, '72. E. D. M. } Paid: (Signed) JENISON & ROGERS. Exhibit 38.

182 And the said AUGUST F. LUDWIG, being carefully examined and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth in the above matter of controversy, did thereupon depose, testify, and say as follows, to wit:

{ U. S. COMM'R SEAL. NOTARY PUBLIC. M'CH 16, '72, E. D. M. WM. D. WILKINS. }

I am part owner of scow C. G. Meisel. I paid part of the bills consequent upon her collision. I kept part of an account of the bills paid. I have not got that account; it was burned up (a sheet of paper and bills) when my shop was burned last winter. All the books and papers relating to the bills I paid were burned up. I have no books or papers showing the bills I paid for repairs, not of any account I think.

A. (Exhibit A No. 35 produced.) I believe this is the bill I paid John P. Clark. I know it was over $700. As far as I remember I only paid two bills in Detroit besides this one. One was to Trowbridge and Wilcox, and one to Dunlap & Donaldson. Those are all the bills I know of that I paid here.

183 (B. Exhibit B No. 36 produced.) I did not pay this, and cannot tell if it is a copy of the bill I paid the Union Dry-Dock at Buffalo. I do not know what was paid there. Do not know whether there was any other bill paid in Buffalo.

C. (Exhibit C No. 37 shown.) Don't know if this is a copy of Fitzgerald's bill. We paid him a large amount of money; how much I cannot tell exactly.

Ques. Can you state whether you paid any other bills at Port Huron?

Ans. I suppose I paid bills all over; remember at Port Huron paying bills to William Stewart, hardware merchants; also to Hubbard & Boyse; don't remember how much; also to Backus & Brothers; cannot give the amount; also to Robinson, sail-maker; cannot give the amount.

D. (Exhibit D No. 38 produced.) I cannot say if this is a bill I paid at Toledo. I paid no bill there.

Cross-examined:

Capt. Jex had charge of her repairs, and of paying her bills. We were not able to repair her fully before she ran at all. We repaired her just enough to get her going again, and get her out as fast as we
184 possibly could do it. When I was subpœnaed I was not notified that they wanted to examine me in relation to the account or damages of the boat.

Ques. Did any one, on behalf of respondent, say anything to you about looking up the bills for this examination?

(Taken subject to objection.)

Ans. No one did. At the time of, and before the collision, the Meisel was in good condition.

Redirect examination:

Can't tell what I was wanted here for, except in this case to testify as the subpœna said.

Recross-examination:

At the time spoken of all my shops, blacksmith's & wagon shops were burned. I saved my safe, but lost my papers. I did blacksmith's work on my A vessel myself; but cannot tell what my bill for it was.

(Signed) AUGUSTUS F. LUDWIG.

{ U. S. C. O., E. D. M., AP. 13, '72. NOTARY PUB., W. D. W. } Sworn & subscribed before me on M'r'h 16, 1872.

WM. D. WILKINS,
U. S. Commr. East. Dist. of Mich.

185 And the said JOSEPH NICHOLSON, having been by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth in the above matter of reference, did thereupon depose and say as follows:

The item 1 in libellants' statement was paid by the Detroit Fire and Marine Insurance Company. It was settled by libellant Ludwig with said company on that basis.

The condition of the sails, rigging, and furniture of the schooner was good during the spring prior to the collision. The condition of her hull was good. I had known the vessel since she was launched. We had her insured in our company. I saw her soon after she was launched; also the spring before the collision—last spring and this spring—and examined her each time. I was present when the survey was made. It included all the work which was necessary to make the vessel in as good repair as she was before the collision. (Taken subject to objec-
186 tions.) It included that only. While she was being raised and repaired I saw her all the time, as I raised her myself the second time. When I took hold of her, everything was done as fast as it could be done.

Cross exam.:

Before the collision she rated "B 1;" that is all that any vessel of her build and grade can rate. I did not examine her after collision with a view to rating her until the following spring. I rated her "B 1" then; think I then reduced her valuation; am not positive; as a rule we reduce valuation as a vessel gets older. The natural reduction from 70 to

to 71 on account of age depends on how a vessel is kept up. Some would decline more than others; don't remember what reduction I made; think I valued her at $10,000 in 1870; don't remember what it was in '72. She was in good condition in spring of 1871, as good as in preceding year, except from natural depreciation from age; believe her repairs were completed at that time. I made an examination as carefully
187 as I usually examine from the eye, for a vessel of such age. Her repairs seemed to be well done. She had not then her canvass on. I thought her repairs were complete as to her hull. I was right with the appraisers when they made their specifications, but not when they made their figures; don't remember what items they put down; didn't read over the items after they put them down. I think I was present when they first made a rough sketch of the items—how many feet of plank, &c., &c.

Redirect:

Think she was not completely repaired before she ran that fall; think her damages have been completely repaired; am not positive. Did not examine her next spring with reference to the repairs made on her, only as I have told you with reference as to rating her.

(Signed) JOS. NICHOLSON.

Sworn & subscribed before me April 13th, 1872.

W. D. WILKINS,
U. S. Comm'r, E. Dist. Mich.

188 STATE OF MICHIGAN.
Wayne County, ss:

JAMES I. CLARKE, being duly sworn, says he is the secretary of the Detroit Fire Marine Insurance Co., and was such secretary at the time of the adjustment of the loss and damage in the case of collision between the Free State and the scow Meisel.

Will you state upon what basis the adjustment was made as to items 31 and 32 of libellant's claim for damages, said items being estimated damages to sails and rigging, furniture, &c., and damages to hull by said collision?

On the basis of the estimates of the surveyors.

Will you state whether or not the settlement between the owners and insurers was made upon that basis, and payments made in accordance therewith, or upon what basis such settlement and payment was made?

The settlement and payment were made upon the basis of those estimates.

(The above testimony objected to by Mr. Brown: 1st, because taken after commissioner's report filed; 2nd, because irrelevant
189 and incompetent.

Cross-ex.:

What payment do you mean?

I mean the payment by the insurers to the insured.

[L. S.] (Signed) JAS. I. CLARK.

In the district court of the United States for the east. dist. of Michigan, in admiralty, ss:

Before Wm. D. Wilkins, a commissioner of said court.

FOR RESPONDENT.

IN THE CASE OF LUDWIG ET AL., OWNERS OF scow Meisell, libellants,
vs.
THE PROPELLER FREE STATE & HER ENGINES, boats, &c., resp'd't.

Depositions taken under order of reference made by said court in said cause, referring it to said comm'r to ascertain, compute, & report damages in said cause. Taken at Detroit, Michigan, before said comm'r, in presence of Henry B. Brown, esq., proctor for said respondent, and of Wm. A. Moore, esq're, proctor for said libell'ts, on
190 April 19th, 1872, said proctors respectively agreeing and stipulating that said depositions might be taken, read, and used as evidence on said reference, and waiving all objection thereunto as to irregularity or informality, and saving and reserving all objection thereto as to relevancy or incompetency.

ON BEHALF OF THE SAID RESPONDENT.

And the said ORVILLE WILLCOX, being duly cautioned and sworn in the above matter to testify the truth, the whole truth, and nothing but the truth, did thereupon depose and say as follows: I am a member of the firm of Trowbridge, Wilcox & Co. (Paper shown, and marked 33.) This is a bill of materials purchased at my store by the owners of scow after collision, and is the only bill they got there that appears on our books.

(Signed) O. WILCOX.

Sworn & subscribed before me April 19th, 1872.

WM. W. WILKINS,
U. S. Comm., East. Dist. Mich.

Admitted by both counsel.

No. 34. It is admitted by counsel for both parties that exhibit annexed, No. 34, is the bill of Dunlap and Donaldson against the scow
191 Measel, purchased at their store by owners of scow after collision, and that it is the only bill they got there that appears on D—d D.'s books.

DETROIT, *Sept. 14th*, 1870.

Scow C. G. Meisel, bought of Dunlap, Donaldson & Co., ship-chandlers, dealers in rope, &c., foot of Woodward avenue. Terms cash.

484½ ℔ M. rope, 22 c..... $106 59

[L. S.] Duplicate. Exhibit 34.

MARCH 15*th*, 1872.

[Ship] Scow Measle, bought of Trowbridge, Wilcox & Co., wholesale & retail dealers, in groceries, provisions, fish, ship-chandlery, &c., Custom-House Block, 1st door E. of Woodward ave., on the dock.

1870.

Sept. 26.	2	boxes of concentrated dye	$ 60
	3	corn-brooms	1 50
	5	hambahr 2 s.	1 25
	7¼	typuryam 20	1 45
	3½	houselen 2 s.	88
	3	scrub brush,' 2 s	75
	4¼	tallow 12	51
Oct.	3.	Repairs on blocks	1 50
		Do. do	1 50
		Repairs on compass	1 95
			$11 89

[L. S.] Exhibit 33.

192 AUGUST F. LUDWIG *vs.* PROP. FREE STATE. } On behalf of respondent.

CHARLES A. JEX sworn.

Q. What day was your vessel sunk?

A. 17th of August.

Delay before raising. Q. What day did Perry & Newton commence raising her?

A. I could not tell you, I am sure.

Q. How long after that?

A. I could not tell you.

Q. Was it a week?

A. I should think it was.

Q. Two weeks?

A. No.

Q. Have you any memorandum that will show?

A. I don't think I have. She was lost on Thursday morning. On Saturday I went home. On Wednesday I came down again; and I think the following Thursday they commenced operations. I should think it was about a week.

Q. How long were they in raising her?

193 A. I could not tell you. I was taken sick after I had worked 3 or 4 days in her, and laid abed until the vessel was brought here. I continued sick for 14 or 15 days, and during that time the vessel was brought up here.

Q. Where do Perry and Newton live?

An. I don't know. Perry, I understand, lives here.

Qu. Who made the contract with Perry & Newton?

An. That was the Fire Marine Ins. Co., sanctioned by Ludwig.

Qu. What were your crew doing from the time she was sunk until she was raised?

An. They were working at her, taking out stone.

Qu. When did you commence taking out stone?

A. As soon as they commenced raising; that was part of the operation of raising, taking out the stone first.

Q. That was about a week after she was sunk?

A. I should think about a week.

Q. What was done during that week—anything?

194 A. I guess we were taking the sails off, and one thing or another.

Q. How high was the top of her mast above the water?

A. I should think it was about 3 feet.

Qu. Could you take the sails off while she was sunk?

A. Yes, sir; did take them off while she was sunk; slipped her booms up and got the goose knocked off the booms; the booms floated up to the top of the mast, and we reached under water to get the hoops off.

Q. When did you last see that $140 that you had?

$140 money.

A. Kelly's Island.

Q. Didn't see it after you left Kelly's Island?

A. I didn't have any necessity of going to see it. I left there at dusk, and it was sunk the next morning before daylight.

Q. Did you make any effort to save it?

A. Yes, sir.

Q. What did you do?

A. Went in to the desk and grabbed the money.

195 Qu. What was the money in?

A. A collar-box.

Qu. Was it in silver or greenbacks?

A. Greenbacks.

Qu. What did you do with the bundle of greenbacks?

A. I grabbed into them and got them, and put them into my overcoat pocket. I put some money there. I had $75 these afterwards that belonged to one of my sailors, given to me in safe keeping; my mate found it and handed it to me. The coat was laying out on the wood-pile.

Q. Did you take off your overcoat in swimming?

A. No, sir; I got so exhausted I couldn't take off anything.

Q. How did the money get out of your overcoat pocket?

A. That is a question I cannot answer very well. I could not look at my overcoat pocket in the water. I don't know whether it was in there.

Q. You say you put it in there.

A. I say I suppose I put it in there; reached in the desk

196 grabbed the money with one hand and my books with the other; came out and threw my books in the boat. I suppose I put the money in my pocket; there was some silver rings and some nickels found on the quarter-deck of the schooner; those were in the bottom of this collar-box; it was the very position I had this collar-box.

Q. When did you look for it?

A. I looked for it after the vessel was raised.

Qu. Where did you look then?

A. In the desk in the cabin.

Q. If you recollect taking it out of the desk, why did you look in the desk for it?

A. I was looking in the desk for other articles. I didn't know whether I had taken it out or not. I knew I grabbed some money out, because there was some money found in my pocket afterwards.

Q. Was that in the desk?

A. That was in the desk, and in that collar-box too.

Q. Was that money wet?

197 A. Certainly; it was in the water 20 minutes; it couldn't be very dry.

Delay at Detroit.

Q. Where was you when the vessel was brought up to Detroit?

A. Brown's Hotel, Amherstburg, sick.

Q. How long after the vessel came up did you go up?

A. I don't know; she came up on Sunday evening. I think it was Wednesday or Thursday afterwards that I came up. They were making

arrangements to raise the vessel; they had got the timbers across her to raise her when I came to Detroit.

Sinking at Detroit. Q. She had sunk in the mean time?

A. Yes, sir; and I found her laying on her side, and the chains under her, ready for raising again.

Q. How came she to sink?

A. I cannot tell you that.

Delay at Detroit. Q. Why was she not put immediately into the dry-dock?

A. I cannot tell you. I wasn't here at all; I was on my back.

Q. What day was she brought up here; do you recollect?

A. I think she was brought up Sunday evening. I am not positive.

198 Q. How long were they in raising her?

A. That I don't know.

Q. You say they commenced on Thursday; did they finish the next Thursday or the Sunday following?

A. I cannot tell you.

Q. Were you sick all the time?

A. I was sick all but three days. The vessel was gone 3 or 4 days when I got up.

Q. Where was she taken after she was raised here?

A. Taken to Clark's dry-dock.

Q. Immediately after she was raised?

A. Immediately; as soon as she left the pier.

Second sink. Q. How long was she sunk up here?

A. I cannot tell you. I don't the time she was sunk. I was there when she was raised.

Q. How long was that after you came up here?

A. I think it was four days; it was longer than that, because George Erwin made five days, and when I came there he left *three*. I

199 think she laid here 8 days, if I am not mistaken; she sunk, and I think she was raised again on Monday. I am not positive, though.

Raising at Malden. Q. Can you give any estimate of the time they were raising her at Malden?

A. I cannot; somewhere about two weeks, as near as I could judge. I will tell you, from the time she sunk there until she was raised again was 24 nights and 25 days; that was the time I paid a man for keeping lights on the rock.

Stripping. Q. Who stripped the rock, (qu. wreck?)

A. Hackett's tug.

Q. What men?

A. Hackett's tug and men; I wasn't there.

Men's time. Q. Why didn't your men assist in stripping?

A. I could not tell, I am sure.

Qu. What were they doing?

A. I don't know; I wasn't there myself at the time.

Q. She was stripped some time before they commenced raising her?

A. O, yes; some time.

Q. You don't know how she came to sink the 2nd time?

A. I don't.

200 Qu. Do you know what time her rudders were finished?

A. Yes, sir; the 14th of October.

Qu. Do you know the day she went into Clark's dry-dock?

A. I don't remember the date of that day. I know the day she went

in, but I don't remember the date of it now. I was there and put her in.

Labor, 46.50. Q. You have charged here $46.50 for labor at Detroit, for which there is no voucher; do you know what that is for?

A. No; it is a good while ago to keep such things in my head.

Q. From the time she was sunk first until her rudders were finished was 58 days?

A. Yes, sir.

Q. How were you hired—by the month or season?

A. By the season.

Qu. How much for the season?

Capt.'s time. A. $1,000 for 8 months; 20 shillings a day for all overtime; it commenced the 1st of April.

Q. How was your mate hired?

A. By the month.

201 Men's time. Q. How much a month?

A. $60 for 4 months; $65 for the balance.

Q. How was Rutherford hired?

A. By the day.

Q. Were all the rest hired by the day?

A. All by the day except the cook.

2nd sinking. Q. Do you know whether there was any damage done to the vessel at the time she sunk the second time?

A. It is impossible for me to tell that. I shouldn't think there was, though.

Q. Do you know whether there was any outfit lost at the time of the 2nd sinking?

A. I could not tell you that. I don't see how it could be lost, though; she laid pretty near a month in a stiff ground, and she would not be apt to lose anything up here.

Men's time. Q. What were your men doing while she was being raised?

A. Lifting stone with a derrick; handling stone on the dock.

Q. Were they all working?

A. Yes, sir.

Q. Were you not sick.

202 A. They were working when I went back; the mate came and reported to me every night.

Q. Were there any men employed to get out stone except your crew?

A. Yes, sir.

Q. How many?

A. From 2 to 4 all the time.

Q. How long were they getting out stone?

A. I cannot tell the exact time; I was sick a few days after they commenced, and I didn't get up any more until the stone was all out.

Q. How much was the stone worth?

A. $4.75. It would have been worth in Saginaw, if I could get it there, about $11 a cord.

Q. How many cords were there?

A. Forty cords.

Q. How much did you pay for it a cord?

A. $4.75.

Q. What were your men doing while the vessel was sunk up here?

A. Working.

Q. What were they doing?

A. running down timber from Clark's dry-dock.

203 Q. Were the whole crew engaged?

A. Yes, sir; besides 7 or 8 more.
Q. How long did they continue to work.
A. They worked there until the vessel was in the dock, and some of them until the vessel was ready for sea.
Q. Who worked there until the vessel was ready for sea?
A. Rutherford & Barnes, I think.

Surveyors' fees.

Q. In the estimates of damages by Mr. Eddis & Morris, there is a charge of $30 for services, [surveyors' fees.] Isn't that the same $30 that was paid to them?
A. I expect it was paid. We paid for their services apiece, I understood. I didn't hire them.
Q. That was all the serving (qu. surveying?) there was done?
A. That was all.
Q. What was the amount of Clark's bill in the dry-dock.
A. I cannot remember that.
Q. Where else was she repaired?
A. Port Huron.
Q. Who repaired her at Port Huron?
A. Fitzgerrald & Lothrop.
Q. What was the amount of their bill?
204 A. I don't know.
Q. Who paid it?
A. Ludwig.
Q. Where else was she repaired?
A. Toledo; Buffalo.
Q. By whom in Toledo?
A. I can't remember the name.
Q. Ship-carpenters?
A. Yes, sir, and caulkers.
Q. Who in Buffalo repaired her?
A. I think it was done at the Union dock.
Qu. Do you know the amount of all the repairs that were put upon her?
A. I do not.
Q. Were the repairs that were done in Toledo & Buffalo in consequence of the collision?
A. Yes, sir.
Q. Why didn't you have it all done here?
A. In the first place Ludwig had to pay down here money, and he didn't have the money; there we got time, and he could turn his own trade in there; he was doing work for the ship-yards.
Q. When were her repairs finished?
A. They are not finished yet.
205 Qu. Was she inspected afterwards by the insurance inspector?
A. She may have been this spring.
Q. Do you know whether her rigging has been changed?
A. I don't.
Q. You say you don't know the am't of Clark's bill?
A. I don't remember now.

Cleaning mud.

Q. When was this money paid for cleaning the mud off? Was there any money paid for cleaning mud?
A. I guess there was.
Q. Do you know?
A. I don't remember now positively. I think there was, though; it took four or five men a day to clean it out of her; they must have had to pay them. I had my own men shovelling mud out of her too.

Repairs.

Q. What repairs did you have done in Toledo?
A. I had a center-board box corked, fender-wales put on.
Q. Were these injured by the collision?
A. Caused by the collision.
Q. How?
A. By the larger vessel shaking her all up; loosened plank.
Q. What did you have done at Port Huron?
206 A. New box, new ceiling inside, new strengthening pieces.
Q. What repairs in Buffalo?
A. The principal part caulking.
Q. Was that caused by the collision?
A. Yes, sir.
Q. Was she repaired in any other place than Toledo, Detroit, Buffalo, & Port Huron?
A. I think not.
Qu. Are her repairs finished now?
A. They are finished. She is not as good as she was before.
Q. In what respect is she not as good?
A. She hasn't got her fastenings in yet.
Qu. Isn't her class now as high as before the collision?
A. I don't think she was inspected since the collision; an inspector couldn't tell much about the vessel working and shaking.
Q. Is she not as good as she was before the collision except the jar to the vessel?
A. No, sir.
Qu. In what respect is she deficient?
A. She is weak.
207 Q. Is she as complete as she was before the collision except in the manner of weakness?
A. No, sir; she is not as complete as before.
Q. In what respect?
We haven't had the cabins fixed up the way I wanted it.
Q. How much would it cost to fix the cabin as it was before?
A. It would cost from 75 to $100.
Q. In what respect is she different from what she was before?
A. Her sails would have been a great deal better if they had not lain in water.
Q. What difference is there on the sails?
A. One year's work.
Q. How much would that amount to in money?
A. I don't know what the canvass is worth; a set of canvass would probably be worth 7 or $800.
Qu. How long would it last?
A. With common usage it ought to last 4 years.
Q. There would be a difference of $200 in the canvass?
208 A. Pretty near it; I guess $100 would cover it.
Q. You fixed it to suit yourself?
A. I told you I don't know
Q. What were you doing after you came to Detroit?
A. Overseeing the rest of the vessel.
Q. What were you doing after she got into the dry dock?
A. Overseeing here; working it here.
Q. Sitting in John P. Clark's office smoking cigars?
A. No, sir; I never sat in Clark's office smoking a cigar while I was there; that is where you are mistaken.

Q. Have you any idea of the amount that it has cost to repair this vessel?

A. I haven't the least; they showed me expenditures that were made after the settlement with the insurance company to the amount of about 17 or $1,800, besides the 800 that we got from them through policies, that I paid.

Ch'g'd in repairs.

Q. Is it not the business of some [the seaman] one to see to painting the sails and getting the vessel ready for sea?

A. It is calculated to be.

209 Q. It is also their business to send down the rigging—overhaul it?

A. No; that is, it was done by riggers.

Q. Don't seamen put up the rigging?

A. Hardly ever; they don't take it down when they have seamen employed. A man has to be a seaman to understand it, but still he is called a rigger.

Q. Do you use the jibs that you used before the collision?

A. One; the other blowed away. I got a new one.

Qu. Was there any damage done to the jibs?

A. Yes, sir.

Q. What?

A. They were mildewed and rotten; they laid under weather 25 days.

Q. Wasn't she inspected in the spring of '71?

A. Not to my knowledge. I don't think she was.

Q. When were the repairs put here by Fitzgerrald & Lothrop, of Port Huron?

A. A year ago last fall, a part of them last season; we kept repairing them along as we were able to be.

Q. When were they done at Buffalo?

A. Last season, and the season before, in the fall.

Q. When were the repairs done in Toledo?

210 A. Pretty much all of them last season, when we were able to put the vessel in shape; it took all last year to pay up the bills. *One* didn't get but very little out of her last year, if anything.

(Indorsed:) Rec'd & filed April 16, 1872. Wm. D. Wilkins, comm'r.

211 *(Girl, &c.)*

[Stamp.]

DETROIT, *Mich.*, *Sept.* 12, 1870.

Received of Detroit Fire & Marine three hundred dollars on account contract scow "Meisel." $300.

(Signed) PERRY & NEWTON.

(Girl, &c.—Voucher No. 1, $1,200.00.*)*

[Stamp.]

DETROIT, MICH., *Sept.* 13, 1870.

Received of Detroit Fire & Marine Ins. nine hundred dollars, in full balance contract scow "Meisel:" 107.43, Newton's order; 10, tug; 782.57, check—$900.00.

(Signed) PERRY & NEWTON.
PERRY.

No. 2—Keville & Co., $25.00.

AMHERSTBURG, *Sept. 26th*, 1870.

Scow "Meisel" to Keville & Co., Dr.

Sept. 26th. To dockage on sails & booms..... 10 00
" 26, " " limestone..... 15 00

$25 00

Received payment.
(Signed) KEVILLE & CO.
[Stamp.]

No. 3—Ellis Brown, $52.

AMHERSTBURG, *Sept. 23rd*, 1870.

Received of Captain C. A. Jex, for boarding men at work on wreck of C. G. Meisel, the sum of $52.00 for 13 weeks' board, at $4 pr. week.
Received payment.
(Signed) ELLIS BROWN.

212 *No. 4—Desjardin $36.00, M. Desherdin bill.*

AMHERSTBURG, *Sept. 12th*, 1870.

Scow Meisel to M. Desherdan, Dr.

To tending and furnishing lights on wreck 24 nights, 1\frac{50}{100}$ per night, American C'y..... $36 00

The above bill is correct.
Received payment.
I certify that the above bill is correct.
Received payment.
(Signed) MICHAEL DESHERDAN.
Capt. CHARLES A. JEX, *Scow Meisel.*

CLARK'S DRY DOCK, *Sept. 22d*, '70.

Scow Meisel Dr. to James Barnes.

To 16 days $\frac{1}{2}$ labor, $1.50 per day..... $24 75
By cash paid..... 8 00

$16.75. $16 75
Rec. payment.
(Signed) JAMES BARNES.
Capt. CHARLES A. JEX.

No. 5.—Laborers, $38.27.

DETROIT, *Sept. 22nd*, 1870.

Schooner C. G. Meisel, Dr. to Samuel Cokely.

To 15$\frac{3}{4}$ days' labor, at $1.50 per day..... $23 62$\frac{1}{2}$
By cash paid..... 2 10

21 52

(Signed) Capt. CHARLES A. JEX.
Rec'd payment.
(Signed) SAM'L COKELY.
J. Nicholson, 5$\frac{3}{4}$ days. J. NICHOLSON.

213 AMHERSTBURG, *Sept. 16th*, 1870.

[SHIP.] Shipped in good order by Keville & Co., for account and risk of whom it may concern, on board the st. Dove, whereof J. H. Sloan is master, now lying in the port of and bound for the following articles, to be delivered in like good order at the port of destination, (the dangers of navigation, fire, collisions, and breakage of canals only excepted,) unto the consignee named in the margin, or to assigns.

In witness whereof the master of said vessel hath affirmed bills of lading, all of this tenor and date, one of which being accomplished, the other to stand void.

Booms, gafs, &c 20 00

Rec'd payment.

G. W. ALEXANDER.

Steamer Dove.
Keville & Co., Scow Meisel.
Scow Meisel dt No. 6.

214 *M.* 7, 8, 9, 10, 11.

AMHERSTBURG, *Sept. 27th*, 1870.

Scow C. G. Meisel to F. B. Hackett, Dr.

To use of Comet 7 days, $15.00 per day	$105 00
" " " Relief 7 " " "	105 00
Stripping wreck	75 00
Use of tug Prince Alfred	50 00
Small lighter	15 00
	$350 00

Received payment.
[Stamp, Sept. 30th.]

(Endorsed:) Received, Detroit, Sept. 30th, 1870, three hundred & forty dollars.
$340.

F. B. HACKETT.
P. MONAGHAN.

105, 7; 105, 8; 15, 9; 50, 10; 65, 11—$340.

No. 12.

Pay sch'r J. G. Kolpege, on order of owner, one hundred and fifty dollars for six days, at $25 per day, at scow C. G. Meisel.

(Signed) JOS. NICHOLSON.

Detroit, Sept. 22nd, 1870.
[Stamp.]
To Detroit, F. & M. In. Co., Detroit.
John B. Jones, owner sch'r J. G. Kolpege.
Sch. Colfage.

215 No. 13.

Scow Meisel to Scow Morgan, (Malden,) Dr.

To 3 days' services, @ $15 per day 45

(Signed) VICTOR RAMAH.

Scow Morgan $45 00

No. 14.—*Tug Clara*, $30.00.

[Stamp.]

DETROIT, MICH., *Sept. 20th*, 1870.

Scow Measel to Tug Clara, Dr.

For towing from Copper dock & delay & handling pump to & from Detroit, thirty dollars $30 00

Correct: , *Master.*
Received payment.

A. H. MILLS,
Collector.

DETROIT, MICH., *Sept. 17th*, 1870.

[Stamp.]

Scow Morgan to Tug Urania, Dr.

For towing from Detroit to Copper dock, five dollars $5 00

Correct: , *Master.*
Received payment.
(Signed) A. H. MILLS,
Collector.

216 No. 15.

DETROIT, *Sept. 20th*, 1870.

Schr. Colfage to Tug Clara, Dr.

For towing from Copper dock, Clark's dry dock & timber, seven dollars $7 00

Correct: , *Master.*
Received payment.
Tug Urania, $12.

A. H. MILLS,
Collector.

No. 16.—*John Quinn*, $107.00.

Scow C. G. Meisel to John Quinn, Dr.

1870, to 3 days' diving, @ $30 per day		90
" 3 days' services, $5 "		15
Cartage		2
		111 50
Paid Simons		4 50
		107 00

Received payment, Oct. 5, '70.
(Signed) JOHN QUINN.

No. 17 & 18.—*Pho. Ins. C. pump-bill*, $97.40, *scow C. G. Meisel.*

Detroit Ins. Co., on account, &c., scow C. G. Meisel, to L. B. Firtin, agt., of the Phœnix Ins. Co., Buffalo, Dr.

To am. of 12-in. wrecking pump, 2 days, at $40 per day $80 00

To 1½ gal. lard-oil 2 40
To 2 nights' extra work, engineer, $7.50 per night $15 00

$97 40

Detroit, Sept. 23rd, 1870, rec'd payment.
(Signed) L. B. FIRTIN, *Agt.*,
Per A. MERYIN, *Engineer.*

[Stamp.]

217 No. 19.—*Viger & Brothers*, $15.00.

DETROIT, MICH., *Sept.* 19, 1870.

Detroit, F. & Marine Ins. Co. bought of Viger Brothers, dealer in coal & pig-iron, office & yard foot of Randolph st.

2 tons lump, B. Hill, 7.50 ..... 15 00
Received payment.
(Signed) VIGER & BROTHERS,
HAWK.

Scow Meisel taken by J. W. Clark for pumps.

Scow C. G. Meisel to Jno. P. Clark, Dr.

For lumber, nails, & use of screws, blocks, & toggles $30 54
Rec'd pay't in full.
(Signed) J. P. CLARK.
M. BELMIN.

No. 20.—*John P. Clark*, $30.54.

Scow C. G. Meisel to Jno. P. Clark.

1870.

Sept. 20. To use of 6 screws & block, 6 d'ys, @ 3s 13 50
" 245 ft. deck plank 4 ..... 10 02
128 " board, 4 ..... 5 12
5 lbs. spike, 7 35
5 nails, 7 35
4 toggles, 6 days, @ 5 ..... 1 20

30 54

DETROIT, *Sept. 26th*, 1870.

218 No. 21.—*Geo. Irving*, $25.00.

Scow Meisel to Geo. Irving, Dr.

1870, Sept. 26. To 5 days' services 5 ..... 25 00
Received payment.
(Signed) GEORGE IRVING.

No. 22.—*Lab. wages*, $43.72.

SPRINGWELLS, *Sept. 24th*, 1870.

Capt. Nicholson, Dr., to A. F. Jenks for board of men emploied on the scow Meizel.

Meals 204 at 30c $ $61 20

Overcharge..... 20 00

41 00

9 weeks & 5 days, 4½ per week..... 43 72

Received, Oct. 20th, $43.67.

(Signed) A. F. JENKS.

No. 24.—*Surveyor's fees.*

DETROIT, MICH., *Sept. 30th*, 1870.

Received of the Detroit F. & M. Ins. Co. thirty dollars in full for their surveyor's fees on schr. C. G. Meisel..... $30

(Signed) E. MAYES.

No. 26.—94.39.

Paid Samuel H. Benton, 27 d'ys' labor, @ $2..... $54 00
" William Gerard, labor 3½ days..... 5 04
" Michael Tracey, labor..... $5 75
" " 13 days' labor..... $19 50
James Barnes..... $8 00
S. Cokely..... $2 10

$94 39

219 *Captain Jakes to Mrs. Webber, Dr.*

To breakfasting three men..... $ 75

Amherstburg, 17th August, 1870.

Received.

(Signed) JANE WEBBER.

No. 28.—*Board*, $25.50.

AUG. 25TH, 1870.—Received of Capt. Jex $24.75 for board for self and men at time of shipwreck.

(Signed) ELLIS BROWN.

Pay Duncan Simons three days and one night's service on scow C. G. Meisel, Jos. Ficholson, $6.50.

Rec. pay.

(Signed) DUNCAN SIMONS.

DETROIT, *Sept.* 22, '70.

A. Ray.—$13, *Sept.* 21, '70.

[Office of the Detroit Fire and Marine Insurance Company, No. 134 Jefferson avenue. C. Van Hersau, pres.; Edward Kanter, vice-pres.; James J. Clark, sec'y.]

DETROIT, MICH., *Sept. 21st*, 1870.

Pay A. Ray thirteen dollars for six and half's work, and charge scow C. G. Meisel.

(Signed) JOS. NICHOLSON.

$13. C. B. Pa. 107.

To DET. F. & M. INS. CO., *Detroit.*

(Endorsed:) Rec'd payment.

(Signed) A. RAY.

SEPT. 21, '70.

220 No. 27.—$46.50.

Paid S. Beaton, at Detroit, for labor	$18 00
Paid Geo. Rutherford for labor	9 00
Paid Duncan Symons for labor	6 00
Paid A. Ray for labor	13 00
	$46 50

No. 32.

We, the undersigned, at the instance of the owner of the scow Meisell, do jointly declare unto whom it may concern that, on the twenty-second day of Sept., 1870, we went on board of said scow while lying at Clarke's dry-dock, and did thoroughly examine her throughout to ascertain the amount of damage done her in colliding in Detroit River, near Malden, Ont., ; and we now jointly, at this date, make the following specifications of repairs necessary to make her in as good order as previous to the collision:

221	Shoreing & straightening up to place	100
	New centre-board	75
	6 frames & 2 floors, $5	30
	14 streaks planking, averaging 40 ft. on side & bottom on port side 550 ft., 75c	410
	2 streaks starboard side	50
	100 ft. plank on starbo'rd	100
	Frames do.	25
	Forefeet & garbet streak	50
	2 sister keelsen alongside of maise, & keelson 75 feet, 8 × 12	175
	30 ft. clamp & shelf-piece	60
	16 " bilge keelson	26
	2 pieces for bilge, 40 ft., 5 × 12	95
	3 streaks ceiling, averaging 40 ft	125
	4 hanging knees, hole	24
	10 stanchion in hole	15
	New forecastle	50
	2 oak beams, partner, & hatch & carline	50
	50 ft. new deck. 24 ft. wide	235
	1 set hatch-covers & coverings	45
	Centre-board wrench	35
	6 stanchions	30
	41 ft. stringers & rail	85
	Rep. bulwarks	75
	Cabin & materials	350
	1 top-mast & cap	45
		$2,360
222	4 cross-trees & slate	36
	Caulking & materials	300
	Yawl-boat rep	25
	Cover over rudder-steerer	10
	1 quarger knee	6
	Refastening vessel	125
	1 coat paint outside & 2 coats on new, all through	175
	Blacksmith's work	50

Docking		150
Fore-scuttle		20
Cleaning vessel of mud, &c		25
3 surveyors		30
		$3,312
Valuation of scow as she now lies in dry-dock		3,000 00

Detroit, Sept. 22d, 1870.

(Signed) JOHN OADES.
WILLIAM MORRIS.

		3,312
Sail & rigging		1,274 21
		4,596 21

223 No. 31.—*Mayes' dep.*

28 hundred lb. of Manila rope, 22c		616 00
1×24 foot-burgee	27 00	
1×18 " ensign	27 00	
Spirit-compass, badely damaged	20 00	
1 brass "	10 00	
2 single matrass	5 00	
1 double "	5 00	
6 pair of double blankets for cabin	18 00	
6 single quilts	15 00	
6 " sheets	2 22	
3 feather pillows	7 50	
6 pillow-slips	1 80	
6 window-curt'ins	1 50	
1 signal-light	11 00	
2 cabin-stools	1 25	
1 globe-lamp	2 00	
Crockery ware, knives & forks, &c	25 00	
Cook-stove dam'ged, and all furniture lost	15 00	
3 links of stove-pipe	1 86	
1 bonnet *per* top of pipe	5 00	
4 three-gallon crocks	1 50	
2 two-gallon "	50	
1 one-gallon "	25	
3 one-gallon jugs	60	
1 sugar-box	75	
224 1 tea-canister	75	
1 coffee "	75	
1 large cabin-lamp	3 50	
1 small " "	1 50	
1 large looking-glass	5 00	
2 " towels	1 50	
" table-cloths	6 00	223 73
Forward		839 73
Forward		839 73
1 black-walnut table	9 00	

FORECASTLE FURNITURE.

4 single bed-ticks		2 00	
8 pair of blankets		28 00	
4 straw-pillows		2 00	
4 single quilts		10 00	
1 lamp		75	
5 links of 5-in. pipe		2 50	
1 draw-bucket & rope		1 25	
2 patent pails		75	
4 corn brooms		2 00	
3 dozen b'laying-pins		2 20	
395 inch. of mast hoops		11 88	
1 set of mast-head glasses		20 00	
1 three-gallon oil-can		75	
182 inch. of topmast hoopes		5 46	
1 large mar'rs clock		8 00	
225 2 marlin-spikes		2 00	
1 serving-board		75	
2 hand-fids		2 00	
1 axe		2 25	
1 handsaw		2 50	
1 saw-buck		75	

SAILS.

Repairing jib top-sail		3 50	
" fore-gaff top-sail		9 75	
2 jibs damaged by being in water		25 00	
Rigging to be sent down & overhauled & put up again		150 00	
50 lbs. of spun yarn		9 00	
25 " " muslin		6 00	
25 " " hous'line		6 00	
30 " " tolland		4 50	
½ bar'l of tar		3 00	333 34
Forward			1,173 07
Forward			1,173 07
Sending up top-mast, bending sails, & getting vessel ready for sea		50 00	
Blocks, & complete the fit-out which has been lost		51 14	
2 sus-rayes		20 00	121 14
			$1,294 21

226 District court of the United States for the eastern district of Michigan. In admiralty.

LUDWIG ET AL.
vs.
PROPELLER FREE STATE.

Items of damage suffered by libellant in said collision.

First. Items, raising and getting scow to dock:
(1.) Detroit F. & M. Ins. Co. p'd Perry & Newton

as per contract for raising vessel and delivering her at dry-dock exclusive of lightening cargo	1,200 00		
(2.) Keville & Co., dockage on cargo and sails at Malden	25 00		
(3.) E. Brown, board of laborers at Malden	52 00		
(4.) M. Desherdey, keeping light on wreck 24 nights	36 00		
(5.) Laborers getting out cargo at Malden	38 27		
(6.) Steamer Dove freighting spars & sails to De-	20 00		
227 (7.) Barge Comet lightening stone, 7 days.	105 00		
Cont'd	$1,476 27		
Bro't forward	$1,476 27		
(8.) Barge Relief, lightering stone, 7 days	105 00		
(9.) Use of small lighter	15 00		
(10.) Tug Prince Albert, towing lighters	50 00		
(11.) F. B. Hackett, saving sails & spars	65 00		
(12.) Schoo'r J. P. Colfage, 6 days' service at Detroit	150 00		
(13.) Scow Morgan, 3 days' do	45 00		
(14.) Tug Clara, taking steam-pump from Detroit vessel & return, & handling same	30 00		
(15.) Towing scows & timber, $7+5	12 00		
(16.) John Quinn, diving 3 days, $30	90 00		
" labor 3 " $5	15 00		
" cartage	2 00		
(17.) Phœnix Insu. Co., use of steam-pump 2 days	80 00		
228 (18.) Night service of engineers, $15.00 & 2.40	17 40		
(19.) 2 tons coal for pump	15 00		
(20.) Lumber & nails, & use of screws, blocks & toggles	30 54		
Continued	2,198 21		
Bro't forward	2,198 21		
(21.) Geo. Irving, service 5 days, $5	25 00		
(22.) Paid laborers at Detroit	43 72		
(23.) Telegrams to Malden	77		
(24.) Surveyors, 3 fees	30 00		
(25.) Protest, $5.00, telegram $5.05	10 05		
(26.) Labor lightening cargo at Malden	94 39		
No voucher, no explanation. (27.) Labor, Detroit	46 50		
(28.) Board of men at Malden	25 50		
(29.) Expense to & at Detroit for assistance to raise vessel	9 75		
229 (30.) Reloading cargo at Malden	6 94	2,468 66	
(31.) Repairs on sails & rigging & furniture		1,274 21	
Should be		1,294 21	
(32.) Repairs to hull		3,312 00	
(33.) 58 days @ $20 net earnings		1,160 00	

WAGES OF CREW.

Cap. Jex, 58 days, 4.17	241 86	
(34.) S. Beaton, mate $2	116 00	

Geo. Rutherford, $1.50	87 00		
James Barns, $1.50	87 00		
Continued	531 86	8,214	87
Brought forward		8,214	87
Wages forward	531 86		
A. Cokely, 20 days, 1.50	30 00		
Horatio Jex, 15 days, 1.50	22 50		
4 men, ea. 3½, 1.50	21 00		
Cook 11 " 1.50	16 50		
A. Martin, 12 " 1.50	18 00		
A. Dow, 6 " 1.50	9 00		
Ed. Parsons, 6 " 1.50	9 00		
		657	86
(35.) Board of men 316 days, 75c	237 00	237	00
(36.) 17 cords of stone (loss of,) $8	136 00		
(37.) Cash lost in wreck	140 00	276	00
		$9,285	73

230 District court of the United States for the eastern district of Michigan. In admiralty.

LUDWIG ET AL.
vs.
PROPELLER FREE STATE.

Items of damages suffered by libellants in said collision.

First. Items raising and getting scow to dock:

(1.) Detroit F. & M. Ins. Co. paid Perry & Newton, as per contract for raising vessel & delivering her at dry-dock, exclusive of lightening cargo	$1,200	00
(2.) Keville & Co., dockage on cargo & sails at Malden	25	00
(3.) E. Brown, board of laborers at Malden	52	00
Deduct 2 weeks. (4.) M. Desherday, keeping light on wreck 24 nights	36	00
Deduct sailor. (5.) Laborers getting out cargo at Malden	38	27
(6.) Steamer Dove, freight on spars & sails to Detroit	20	00
(7.) Barque Comet, lightening stone, 7 days	105	00
Barque Relief, lightening stone, 7 days	105	00
(9.) Use of small lighter	15	00
Cont'd	$1,596	27
231 Brought forward	$1,596	27
(10.) Tug Prince Albert, towing lighter	50	00
Too much when were sailors. (11.) S. B. Hackett, saving sails & spars	65	00
No. (12.) Sch'r "J. G. Calfage," 6 days' service at Detroit	150	00
2d sinking. (13.) Scow "Morgan," 3 days' do	45	00
2d sink. (14.) Tug Clara, taking steam-pump		

	from Detroit to vessel & return & handling same	30 00		
Same as 13.	(15.) Towing scows & timber, $7& $5	12 00		
2d. sm'k.	(16.) John Quinn, diving 3 days, $30	90 00		
	" labour, 3 days, $5	15 00		
	" cartage	2 00		
2d.	(17.) Phœnix Insurance Co., use of steam-pump 2 days	80 00		
Do.	(18.) Night-service of engineer, $15.00 and $2.40	17 40		
Do.	(19.) 2 tons coal for pump	15 00		
Do.	(20.) Lumber & nails & use of screws, blocks, & toggles	30 54		
Do.	(21.) Geo. Irving, service 5 days, $5	25 00		
232 Do.	(22.) Paid labourers at Detroit	43 72		
	(23.) Telegrams to Malden	77		
		2,237 16		
	Bro't forward	2,237 16		
	(24.) Surveyor's 3 fees	30 00		
	(25.) Protest, $5.00; telegram, $5.05	10 05		
See 5, inc. wages.	(26.) Labor, lightening barge at Malden	94 39		
No vouch.	(27.) Labor, Detroit	46 50		
Bbj.	(28.) Board of men at Malden	25 50		
	(29.) Expense to & at Detroit for assistance to raise vessel	9 75		
	(30.) Reloading cargo at Malden	6 94		
			2,468	66
	(31.) Repairs on sails & rigging & furniture		1,274	21
	(32.) Repairs to hull		3,312	00
Too long.	(33.) 58 days, @ $20 net earnings.		1,160	00

233 WAGES OF CREW.

Capt. Jex, 58 days, $4.17	241 86		
S. Beaton, mate, $2.00	116 00		
Geo. Rutherford, $1.50	87 00		
James Barns, $1.50	87 00		
A. Cokely, 20 days, $1.50	30 00		
Horatio Jex, 15 " $1.50	22 50		
4 mea, ea. 3½, 1.50	21 00		
Cook, 11 days, 1.50	16 50		
A Martin, 12 "1.50	18 00		
A. Dove, 6 "1.50	9 00		
Ed. Parsons, 6, 1.50	9 00		
		657	86
Brought forward:			
(35.) Board of men 316 days, *c* 75 cts	237 00		
		237	00
(36.) 17 cord of stone, (loss of,) *c* $8.00	136 00		
Cash lost in wreck	140 00		
		276	00
With voucher 32		$9,285	73

No. 32.

We, the undersigned, at the instance of the owner of the scow "Meisell," do jointly declare unto whom it may concern, that on the twenty-(20) second day of Sept., 1870, we went on board of said scow, while lying at Clarke's dry-dock, Detroit, and did thoroughly examine
234 her throughout, to ascertain the amount of damage done her in colliding in Detroit River, near Malden, Ont., and we now jointly, at this date, make the following specifications of repairs necessary to make her in as good order as previous to the collision:

Shoreing & straigh'ening up to place	100 00
New centre-board	75 00
6 frames & 2 floors, $5	30 00
14 streak-planking, averaging 40 feet on side and bottom on port side, 560 ft., 75c	410 00
2 streaks, starboard side	50 00
100 ft. plank on starbo'rd	100 00
Frames, do.	25 00
Forefoot & garbet-streak	50 00
2 sister keelson alongside of main keelson, 75 ft., 8x12	175 00
30 ft. clamp and shelf-piece	60 00
16 " bilge keelson	26 00
2 pieces for bilge, 40 ft., 5x12	95 00
3 streaks ceiling, averaging 40 ft	125 00
4 hanging-knees, hole	24 00
10 stanchions in hole	15 00
New forecastle	50 00
2 oak beams, partner, & hatch, & carline	50 00
50 ft. new deck, 24 ft. wide	235 00
1 set hatch-covers & covering	45 00
235 Centre-board-wench	35 00
6 stanchions	30 00
41 ft. stringer & rail	85 00
Rep. bulwarks	75 00
Cabin & materials	350 00
1 topmast & cap	45 00
Forward	$2,360 00
Am't bro't forward	$2,360 00
4 cross-trees & slats	36 00
Caulkings & materials	300 00
Yawl-boat rep.	25 00
Cover over rudder-steerer	10 00
1 quarger-knee	6 00
Refastening vessel	125 00
1 coat paint on outside, & 2 coats on new all through	175 00
Blacksmiths' work	50 00
Docking	150 00
Forescuttle	20 00
Cleaning vessel of mud, &c	25 00
3 surveys	30 00
	3,312 00
Valuation of scow as she now lies in dry-dock	3,000 00

Detroit, September 22d, 1870.

(Signed) JOHN OADES.
WILLIAM MORRIS.

236 No. 31.—*Mayes' dept.*

28 hundred lb. of manilla rope, c. 22		$616 00
1.24 foot burgee	27 00	
1.18 " ensign	27 00	
Spirit-compass badly damaged	20 00	
1 brass "	10 00	
2 single mattrasses	5 00	
1 double "	5 00	
6 pair of doub. blankets for cabin	18 00	
6 single quilts	15 00	
6 " sheets	2 22	
3 feather pillows	7 50	
6 pillow-slips	1 80	
6 window-curtains	1 50	
1 signal-light	11 00	
2 cabin stool	1 25	
1 globe lamp	2 00	
Crockery-ware, knives & forks, &c	25 00	
Cook-stove damaged, & all furniture lost	15 00	
3 links of stove-pipe	1 86	
1 bonnet for top of pipe	5 00	
4 1-gallon crocks	1 50	
2 2 " do.	50	
1 1 " do.	25	
3 1 " jugs	60	
1 sugar-box	75	
1 tea-canister	75	
237 1 coffee-canister	75	
1 large carbon lamp	3 50	
1 small do. do.	1 50	
1 large looking-glass	5 00	
2 " towels	1 50	
" table-cloths	6 00	
		223 73
Forward		839 73
Bro't forward		$839 73
1 black walnut table	9 00	

FORECASTLE FURNITURE.

4 single-bed ticks	2 00	
8 pairs of blankets	28 00	
4 straw pillows	2 00	
4 single quilts	10 00	
1 lamp	75	
5 links of 5-in. pipe	2 50	
1 draw-bucket & rope	1 25	
2 patent pails	75	
4 corn brooms	2 00	
3 doz. b'laying-pins	2 20	
395 inch mast-hoops	11 88	
1 set mast-head glasses	20 00	
1 3-gallon oil-can	75	

182 inch of topmast-hoops		5 46	
1 large marine clock		8 00	
2 marlin'-spikes		2 00	
238 1 serving-board		75	
2 hand fids		2 00	
1 ax		2 25	
1 hand-pail		2 50	
1 saw-buck		67	
	SAILS.		
Repairing jib-topsail		3 50	
" fore-gaft topsail		9 75	
2 jibs damaged by being in water		25 00	
Rigging to be sent down & overhauled & put up again		150 00	
50 lbs. of spun yarn		9 00	
25 " " maslin		6 00	
25 " " house-line		6 00	
30 " " tallow		4 50	
½ barrel of tar		3 00	
Sending up topmast, bending sails, and getting vessel ready for sea		50 00	
Blocks to complete the fit-out which has been lost		51 14	
2 surveys		20 00	
			454 48
			$1,294 21

239 District court of the United States for the eastern district of Michigan.

AUCUST L. LUDWIG ET AL. *vs.* PROPELLER FREE STATE. } In admiralty.

And now cometh the Western Transportation, claimant in this cause, by Newberry, Doud & Brown, its proctors, and excepts to the report of the commission to assess the damages in said cause, for the following reasons, and it therefore excepts to the allowance of the following items:

First. Voucher 3. (1.) Bill of E. Brown for board of laborers, because it appears the men were employed on the vessel but a small portion of the time..... $52 00

Second. V. 4. (2.) M. Desherdy, keeping lights on wreck 24 nights, because no attempt was made to raise the vessel for two weeks after she was sunk.. $36 00

Third. V. 5. (3.) Laborers getting out cargo at Malden, because the men were sailors whose labor is elsewhere charged..... $38 27

240 Fourth. V. 11. (4.) Amount paid Hacket stripping sails from wreck, because services of crew are charged for same time, they being idle..... $65 00

Fifth. V. 12. (5.) Amount paid for schooner Colfage, because rendered necessary by second sinking, for which we are not responsible..... $150 00

And for the same reason I object to the following items:

Sixth. V. 13. (6.) Paid scow Morgan..... $45 00
Seventh. V. 14. (7.) Paid tug Clara..... $30 00
Eighth. V. 15. (8.) Towing scows & timber..... $12 00
Ninth. V. 16. (9.) Paid John Quinn..... $107 00
Tenth. V. 17. (10.) Phœnix Insur'ce Co..... $80 00
Eleventh. V. 18. (11.) Night service of engineer..... $17 40
Twelfth. V. 19. (12.) Two tons coal for pump..... $15 00
Thirteenth. V. 20. (13.) Use of screws, blocks, & toggles..... $30 54
Fourteenth. V. 21. (14.) George Irving, service 5 days..... $25 00
Fifteenth. V. 22. (15.) Paid laborers at Detroit..... $43 72
Sixteenth. V. 26. (16.) Labor lighting cargo at Malden, because paid to seamen whose services are elsewhere charged..... $3 39

241 Seventeenth V. 31. (17.) Repairs on sails and rigging, because this is a mere estimate, and the sails and rigging are shown to have actually been repaired for a much less sum..... $1,274 21
Eighteenth. V. 32. (18) Repairs to hull..... $3,312 00
Objected to for same reason, and because several of the items are elsewhere charged.
Nineteenth. V. 33. (19.) Demurrage, because the time charged is too long and price too high..... $1,069 52
Twentieth. V. 34. (20.) Wages of crew. No necessity for crew remining, & too much time charged..... $585 51
Twenty-first. V. 35. (21.) Board of men, for same reason as above.. $230 00
Twenty-second. (22.) Interest should be deducted on disallowances.

(Signed) NEWBERRY, DOUD & BROWN,
For Claimant.

(Endorsed:) Filed April 30th, 1872. D. S. Davison, clerk.

242 In the district court of the United States for the eastern district of Michigan, in admiralty.

AUGUST F. LUDWIG
vs.
PROPELLER FREE STATE.

And now comes the said libellants, by Moore & Griffin, their proctors, and except to the report of the commissioners, filed in said cause, for the following reasons, and except to the disallowances by said commissioner of items, as follows:

1. To reduction of item 33 from $20.00 per day to $18.44 per day.
2. To disallowance of item No. 37, cash lots at the wreek.

(Signed) MOORE & GRIFFIN.
Proctors for Libellant.

DETROIT, 3*rd May*, 1872.

(Endorsed:) Filed May 4th, 1872. D. J. Davison, clerk.

243 At a session of the district court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room in Detroit, on Monday, the seventeenth day of June, in the year of our Lord one thousand eight hundred and seventy-two. Present, the honorable John W. Longyear, district judge.

AUGUST F. LUDWIG, ERNEST ORTENBERGER, and Andrew Eymer
vs.
THE PROPELLER FREE STATE, HER ENGINES, &c.
} On a libel for collision. In admiralty.

On reading and filing the report of William D. Wilkins, United States commissioner, to whom it was referred to assess and report the damages sustained by the libellants in this cause, by which there is reported due to the libellants for their said damages the sum of nine thousand eight hundred seventy-three dollars and four cents, ($9,873.04,) and on reading and filing the exceptions of libellants and claimant thereto, and on hearing the arguments of the respective parties, it is ordered that the exceptions of the libellants thereto be, and the same are hereby, overruled
244 and disallowed; and it is further ordered, that of the exceptions filed to said report by the claimant in the said cause, the third, (3,) fifth, (5,) sixth, (6,) seventh, (7,) eighth, (8,) ninth, (9,) tenth, (10,) eleventh, (11,) twelfth, (12,) thirteenth, (13,) fourteenth, (14,) and fifteenth (15) be, and the same are hereby, sustained, and the residue of said exceptions be, and the same are hereby, overruled and disallowed. And it is further ordered, adjudged, and decreed that the said libellants recover of the claimant in this cause the sum of four thousand six hundred and seventeen dollars and sixty-three cents, ($4,617.63,) with interest thereon from April 20th, 1872, the date of the commission's report, without costs; the costs on said exceptions to be paid by libellants.

And it appearing that said propeller has been duly bonded by the Western Transportation Company as claimant thereof, with William Livingston, jr., as surety, by their bond or stipulation in the sum of fifteen thousand dollars, conditioned that the said the Western
245 Transportation Company shall abide and perform the decree of said court in this cause, and assenting that, unless it should so do, execution should issue against them therefor: Now, on motion of Messrs. Moore & Griffin, proctors for said libellants, it is ordered that judgement be, and the same is hereby, entered up against the Western Transportation Company as principal, and William Livingstone, jr., surety, in said bond or stipulation, for the aforesaid sum of four thousand six hundred seventeen dollars and sixty-three cents damages as aforesaid; and it is further ordered that unless said damages shall be paid into the registry of this court within ten days from this date, execution do issue in due form against said principal and surety in said bond therefor.

246 The circuit court of the United States for the eastern district of Michigan:

AUGUST F. LUDWIG, ERNEST ORTENBERGER, & Andrew Eymer, libellants & appel'ees,
vs.
THE PROPELLER FREE STATE, THE WESTERN Transportation Company, claimants & appellants.

To the honorable the circuit court of the United states for the eastern district of Michigan:

The appeal of the above-named appellant respectfully sheweth, that on or about the third day of September, A. D. 1870, the above-named libellants, August F. Ludwig, Ernest Ortenberger, and Andrew Eymer,

exhibited their libel in the district court of the United States for
247 the eastern district of Michigan, against the said propeller Free State, claiming over fifty dollars, and praying, amongst other things, for the reasons set forth in the said libel, that the said propeller might be condemned to pay the demand of the said libellants and the costs in the said libel mentioned.

That process issuing out of the said court having been served on the said propeller, the Western Transportation Company filed their answer to the said libel in the said district court, praying that the said libel be dismissed with costs, as by reference to the said libel and the said answer may more fully appear.

That the cause came on to be heard before the honorable John W. Longyear, judge of the said district court, on or about the 12th day of April, A. D. 1871, upon depositions and proofs taken in the said cause and the testimony and proofs adduced by the respective parties, and the said judge having advised thereon, on the 18th day of July, A. D.
248 1871, made a decree in said cause whereby it was, amongst other things, adjudged and decreed that the damages occasioned by the collision set forth in the libel be equally divided between the owners of the said propeller Free State and the said libellant's vessel, as by reference to the said decree may more fully appear; under which decree a reference was had to a commissioner to assess damages, a report filed, and exceptions thereto argued and submitted, and on the 17th day of June, A. D. 1872, a final decree rendered in favor of the said libellants for $\$4{,}617\frac{33}{100}$.

And this appellant is advised and insists that the said decree is erroneous; and for these and other reasons, it appeals from the said decree, and from every part thereof, and particularly from that portion adjudging the said propeller Free State to be in fault for the collision, as set forth in the said libel, and overruling the 17th and
249 18th exceptions to the said report, and on the said appeal they intend to have the said cause heard anew at the circuit court, on the pleadings and proofs in the district court, and other proofs to be introduced in said circuit court; and the said Transportation Company prays that the said record may be returned to the said circuit court, and that the said decree be reversed, or such other decree be taken as to this honorable court may seem just, and that the appellees may be condemned to pay to the appellants their costs and damages in the premises.

(Signed) NEWBERRY, POND & BROWN,
Claimant' Proctors.

(Endorsed:) Filed June 28th, 1872. D. I. Davison, clerk.

250 EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Darius I. Davison, clerk of the district court of the United States for the eastern district of Michigan, do hereby certify the above and foregoing to be the record in appeal in the case wherein Augustus F. Ludwig, Ernest Ortenberger, and Andrew Eymer are libellants and appellees against the propeller Free State, her engines, &c., the Western Transportation Company, claimants and appellants, being the original pleadings and depositions and true copies of all interlocutory and final decrees of the district court therein.

Witness my hand over the seal of said court, at Detroit, this 1st day of August, A. D. 1872.

[L. S.] (Signed) D. I. DAVISON, *Clerk.*

Transcript on appeal filed in clerk's office, circuit court U. S., eastern district of Michigan, August 1st, 1872.

ADDISON MANDELL, *Clerk.*

251 STATE & EASTERN DISTRICT OF MICHIGAN:

In the circuit court of the United States for the eastern district of Michigan.

AUGUSTUS F. LUDWIG ET AL., LIBELLANTS & appellees, *vs.* THE PROPELLER FREE STATE, THE WESTERN Transportation Company, claimant & appellant.	Oct. 21, 1872. On appeal. In admiralty.

The above-entitled cause will be brought on for hearing at the next term of this court, notice having been served on the part of the libellant & appellee on Newberry, Pond & Brown, proctors for the claimant & appellant, according to the statute & rules of this court. You will please place said cause on the appeal docket of this court for said term.

MOORE & GRIFFIN,
Proctors for Libellants & Appellees.

To the CLERK of said court.

252

253 Afterwards, to wit, on the 7 day of January, A. D. 1873, the following entry was made in open court:

Present, Hon. Holmer H. Emmons, circuit judge.

AUGUSTUS F. LUDWIG, EARNEST OTTENburger, & Andrew Eymer, libellants & appellees, *vs.* THE PROPELLER FREE STATE, THE WESTERN Transportation Company, claimant & appellant.	On appeal from U. S. district court.

This cause now coming on to be heard, on appeal from the district court of the United States for the eastern district of Michigan, is argued in part by Mr. Brown, in favor of said appellants, & by Mr. Moore, in favor of said appellees, & continued for further hearing.

And on the 8 day of said January the following entry was made in open court:

Present, Hon. Holmer H. Emmons, circuit judge.

AUGUSTUS F. LUDWIG, EARNEST OTTENburger, & Andrew Eymer, libellants & appellees, *vs.* THE PROPELLER FREE STATE, THE WESTERN Transportation Company, claimant & appellant.	On appeal from U. S. district court.

This case again coming on to be heard, from the district court of

254 the United States for the eastern district of Michigan, the arguments of counsel on either side are concluded, and the cause submitted to the court for decision.

255 The district court of the United States for the eastern district of Michigan. In admiralty.

Whereas an appeal has been taken from a decree of this court made on the seventeenth day of June, in the year of our Lord one thousand eight hundred and seventy-two, in a certain cause, wherein August. F. Ludwig, Ernest Ortenberger, and Andrew Eymer are libellants, against the propeller Free State, her boats, tackle, apparel, and furniture, and the Western Transportation Company, claimants, by the said claimants:

Now, therefore, the stipulators undersigned hereby stipulate, in the sum of ten thousand dollars, to pay all damages and costs which shall be awarded against the said appellant by the final decree rendered by the appellate court.

THE WESTERN TRANSPORTATION COMPANY,
By JNO. ALLEN, JR., *President.*
WM. LIVINGSTONE, JR.

Taken and acknowledged this 14th day of December, A. D. 1872, by Wm. Livingstone, jr., before me,

D. J. DAVISON,
U. S. Comm., East. Dist. Mich.

256 EASTERN DISTRICT OF MICHIGAN, *ss:*

William Livingstone, jr., of the city of Detroit, Michigan, one of the parties to the above stipulation, being severally duly sworn, each for himself, deposes and says that he is worth the sum of ten thousand dollars over and above all his just debts and liabilities.

(Signed) W. LIVINGSTONE, JR.

Sworn to and subscribed this 14th day of June, A. D. 1872, before me,

D. J. DAVISON,
U. S. Comm., East. Dist. Mich.

Filed in clerk's office of circuit court January 8th, 1873.

A. MANDELL, *Clerk.*

257 Afterwards, to wit, on the 25 day of March, A. D. 1873, a decree & order was entered in said cause in the words and figures following, viz:

Present, Hon. Holmer H. Emmons, circuit judge.

Decree of dist. court reversed.

AUGUSTUS F. LUDWIG, EARNEST OTTENBURGER, & Andrew, Eymer, libellants & appellees,
vs.
THE PROPELLER FREE STATE, THE WESTERN Transportation Company, claimants & appellants.

On appeal from the district court of the United States for the eastern district of Michigan. In admiralty.

This cause having been fully argued by counsel on either side, and

the record & proceedings of the court below being seen and inspected and fully considered by this court, and mature deliberation being thereupon had, it is now by this court considered, adjudged, and decreed that the decree and judgment of the court below be reversed; and it is now further ordered and decreed by this court that the libel filed in this cause be dismissed, and that said claimant and appellant do recover of said libellants and appellees the costs of said appellants in this suit laid out and expended in the court below, and also their
258 costs and charges laid out and expended by said appellants in this cause in this court, to be taxed by the clerk of this court.

Afterwards, to wit, on the 31 day of March, A. D. 1873, the said libellants & appellees came into court and claimed an appeal in the words following, to wit, being in open court:

Claim of appeal.

AUGUSTUS F. LUDWIG, EARNEST OTTENBERGER, & Andrew Eymer, libellants & appellees,
vs.
THE PROPELLER FREE STATE, THE WESTERN Transportation Company, claimants & appellants.

On appeal from the district court of the United States. In admiralty

And now come the said libellants in the above-entitled cause and claim an appeal from the judgment and decree of this court therein to the Supreme Court of the United States, which appeal is now allowed by this court.

259 And afterwards, to wit, on the 2d day of April, A. D. 1873, the said libellants came into court & filed their appeal in the words & figures following, to wit:

In the Supreme Court of the United States, on appeal from the circuit court of the United States for the eastern district of Michigan.

AUGUSTUS F. LUDWIG, ANDREW EYMER, & Earnest Ottenburger, libellants & appellants,
vs.
PROPELLER FREE STATE, THE WESTERN Transportation Company, claimants & appellees.

On appeal. In admiralty.

To the honorable the Supreme Court of the United States:

The appeal of August. F. Ludwig, Andrew Eymer, and Ernest Ottenburger, the above-named libellants and appellants, respectfully sheweth:

That on the 3d day of September, A. D. 1870, the above-named libellants and appellants exhibited their libel in the district court of the United States for the eastern district of Michigan, in admiralty, against the said propeller Free State, her engines, &c., claiming damages in the sum of $11,540, (eleven thousand five hundred and forty dollars,) by reason of a collision between the scow C. G. Meisel, of which
260 the said libellants were claimants, and the propeller Free State, of which the Western Transportation Company was claimant, the particulars of which were set forth in said libel and in an amended libel thereafter filed; that an answer was filed to said amended bill by the said the Western Transportation Company, proofs

were taken, arguments were made by counsel of the respective parties to said suit before the judge of the said district court; and on the 17 day of June, A. D. 1872, a decree was made and entered in the district court of the United States for the eastern district of Michigan in favor of said libellants and appellants and against the said propeller Free State and the said Western Transportation Company, claimants, for the sum of $4,617\frac{63}{100}$.

That upon the 28 day of June, 1872, the said Western Transportation Company, as claimant, deeming itself aggrieved, for reasons set set forth in its appeal, did appeal from said decree and every part thereof to the said circuit court of the United States for the eastern district of Michigan.

That a rehearing was had of said case upon the pleadings and proofs exhibited and taken in the district court aforesaid; and on the 26 day of March, A. D. 1873, a final decree was made and produced in the said circuit court of the United States for the eastern district of Mich-
261 igan in said cause, reversing the decree of the district court made as aforesaid, and dismissing the libel filed by said libellants and appellants.

That the said libellants and appellants, deeming themselves aggrieved by said decree last named, and believing such decree to be erroneous, these appellants appeal from the decree of said circuit court of the United States, and from the whole and every part of said decree, and respectfully pray that the decree of the said circuit court, and the libel and answer, the pleadings, depositions, evidence, and proceedings in said cause, may be sent to the Supreme Court of the United States without delay; and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court, and every part thereof, may be reversed, and a decree made in favor of said libellants and appellants, and that they may recover from the said propeller Free State and Western Transportation Company, claimant, the amount of the damages suffered by said libellants, as set forth in their said libel, together with costs of suit, or such other decree as to the said Supreme Court shall seem just and right in the premises.

Detroit, April 1, 1873.

MOORE & GRIFFIN,
Proctors for Appellants.

W. A. MOORE, *Advocate.*

262 We hereby acknowledge service of copy of the above appeal. April 2d, 1873.

NEWB., POND & BROWN.

Filed in Clerk's office April 2d, 1872.

A. MANDELL, *Clerk.*

263 Supreme Court of the United States.

AUGUST F. LUDWIG, ANDREW EYMER, & ERNEST ORTENBURGER, libellants & appellants,
vs.
PROPELLER FREE STATE, THE WESTERN Transportation Company, claimant and appellee.

On appeal from the circuit court of the United States for the eastern district of Michigan:

Know all men by these presents that we, August F. Ludwig, Andrew

Eymer, and Ern'st Ortenburger, of said eastern district of Michigan, as principals, and Caleb Van Hensen, of Detroit, as surety, of said district, *as surety*, are held and firmly bound unto the said Western Transportation Company, claimant and appellee, in the sum of two hundred & fifty dollars, to be paid to the said the Western Transportation Company, its attorney, successors, or assigns, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this 1st day of April, A. D. 1873.

Whereas the above-named Ludwig, Eymer, and Ortenburger have
264 prosecuted an appeal to the Supreme Court of the United States to reverse a decree rendered in the above-entitled cause by the judge of the circuit court of the United States for the eastern district of Michigan, in admiralty:

Now, therefore, the condition of this obligation is such, that if the above-named Ludwig, Eymer, and Ortenburger shall prosecute their said appeal to effect and answer all costs if they shall fail to recover on their appeal and reverse the decree above appealed from, then this obligation to be void; otherwise to remain in full force and virtue.

ANDREW EYMER, [L. S.]
Per AUGUSTUS F. LUDWIG.
Atty. in fact.
ERN'ST ORTTENBURGER, [L. S.]
Per AUGUSTUS LUDWIG,
Atty. in fact.
AUGUSTUS F. LUDWIG. [L. S.]
CALEB VAN HENSEN. [L. S.]

In presence of—
A. R. AVERY,
D. C. BANCROFT.

I hereby approve of the within bond. April 2d, '73.
ADDISON MANDELL,
Clerk Circuit Court U. S. Eastern District of Michigan.

(Endorsed:) Filed in clerk's office April 2d, 1873.- A. Mandell, clerk.
(Endorsed:) I hereby accept and consent to the sufficiency of the within bond.
NEWB., POND & BROWN.

April 1, 1873.

265 In the Supreme Court of the United States, on appeal from the circuit court of the United States for the eastern district of Michigan.

AUGUST F. LUDWIG, ANDREW EYMER, & ERN'st Ortenburger, libelants & appellants,
vs.
PROPELLER FREE STATE, THE WESTERN Transportation Company, claimants & appellees.
} On appeal. In admiralty.

By the honorable Halmer H. Emmons, one of the judges of the circuit court of the United States for the eastern district of Michigan.

To the Western Transportation Company, claimant and appellee, above named:

Whereas the above-named August F. Ludwig, Andrew Eymer, and

Ern'st Ortenburger have lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the eastern district of Michigan, made in favor of you, the said Western Transportation Company, and have filed the security required by law; you are therefore hereby cited to appear before
266 the Supreme Court, at the city of Washington, on the first day of October term, 1873, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, in the city of Detroit, in the eastern district of Michigan, in the 6th circuit, on this 11th day of April, A. D. 1873.

H. H. EMMONS,
Cirt. Judge.

We do hereby acknowledge service of the within this day by copy duly delivered to us.

Detroit, April , 1873.

NEWB., POND & BROWN,
Claimants' Proctors.

(Indorsed:) No. 5057. In the Supreme Court of the United States, August F. Ludwig et al., libelants & appelants, vs. Prop. Free State, Western Transportation Co'y, claimants & appelle's. Citation. Filed in clerk's office April 12, 1873. A. Mandell, clerk. Moore & Griffin, sols. W. A. Moore, of counsel.

269 *Opinion of Judge Longyear on final hearing.*

The collision occurred between three and four o'clock in the morning, just after daylight had begun to appear, on the 17th day of August, 1870, in the Detroit River, just above Amherstsburg, in Canada, and between the main-land and the head of Bois Blanc Island.

The scow was bound up with a load of building-stone. The propeller was bound down, also loaded.

The weather was fair, and it was a good night to see. The scow had the wind free, and a little over her port quarter.

The propeller struck the scow on the port side, a little forward of the main rigging, crushing her in, and causing her to sink almost immediately.

The specific faults with which the propeller is charged are five in number, and are as follows:

1. Want of proper lights.
2. No lookout.
3. Did not keep her course and pass on port side.
4. Did not slacken her speed.
5. Not fully equipped.

270 The answer denies the faults charged, and that the collision was caused in any manner by fault or negligence on the part of the propeller, and claims that the same was caused solely by fault and negligence on the part of scow, and specifies the following:

1. That the scow had no lookout.
2. She did not keep her course,
3. Officers and crew not at their proper posts, &c.

Mr. William A. Moore (Moore & Griffin) for libellant.

Mr. J. S. Newberry and Mr. H. B. Brown (Newberry, Pond and Brown) for claimant.

LONGYEAR, J.

There is no pretense that the first, second, and fifth charges of fault against the propeller, and the first and third against the scow, are sustained by the evidence.

The case, therefore, stands for decision on the remaining charges only.

The law governing the case is found in articles 15, 16, and 18 of the act of April 29th, 1864, (13 Stat., 60, 61,) as follows:

Article 15. If two ships, one of which is a sailing-ship and the other a steamship, are proceeding in such a direction as to involve risk of
271 collision, the steamship shall keep out of the way of the sailing-ship.

Article 16. Every steamship, when approaching another ship so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steamship shall, when in a fog, go at a moderate speed.

Article 18. Where, by the above rules, one of two ships is to keep out of the way, the other shall keep her course, etc.

The mere fact of collision between a steam-vessel and a sailing-vessel is, as a general rule, prima-facie evidence of fault and negligence on the part of the steam-vessel, it being made her duty, by article 15, to keep out of the sailing-vessel's way; provided always, however, that the sailing vessel is herself without fault. In such cases, therefore, unless it shall appear that the collision was in fact the result, in whole or in part, of fault on the part of the sailing-vessel, the steam-vessel must bear the loss. Hence it becomes important in this case in the first instance to inquire into the charge of fault made against the scow.

By article 18 it was the duty of the scow to keep her course,
272 and the charge of fault made against her is that she did not do so.

By the evidence adduced on behalf of the scow, the following facts are established: After entering Detroit River the scow kept up along nearer to the Canadian (her starboard) bank. Just after passing Amherstburg the steamer Jay Cooke passed the scow on her starboard side, or between her and the Canadian bank. As the Jay Cooke was passing her, the scow came up (starboarded) one point or thereabouts, in order, as the witness said, to give the Jay Cooke more room. After the Jay Cooke had passed, the scow ported, in order to get into the wake of the steamer. It was while she was sailing under this port order that the propeller came down upon her. When the collision became inevitable, the scow's helm was put hard aport, and the collision occurred.

Here, then, by her own showing, were at least two changes in the scow's course. Did these changes, or either or them, occur after it had become the duty of the scow to keep her course?

And if so, did such changes cause or contribute to the collision?
273 I think the proofs show that the propeller had been made from the scow before the Jay Cooke passed. At all events, she was made aware of the approach of the propeller when she and the Jay Cooke exchanged signal-whistles, which occurred just as the Jay Cooke was passing the scow, and of course before the latter had ported to get into the Jay Cooke's wake. The proofs further show that when the two steamers blew their signal-whistles the propeller and scow were not to exceed a half a mile apart, and were probably considerably nearer than that, and that when the scow ported the distance between them was only some 300 to 400 feet.

From these facts it is clear that the proximity of the two vessels was

such that the duty of the scow to keep her course had attached before she had made either of the changes mentioned.

Now, let us see what effect these changes had in bringing about the collision.

The proofs on the part of the propeller show that the scow was
274 first made from the propeller at or about the time the Jay Cooke was passing the scow, and that then the scow showed to the propeller her green or starboard light. This must have been after the scow had starboarded to give the Jay Cooke more room; because, owing to a bend in the river between the two vessels, and their position in the river, the starboarding of the scow would have the effect to shut in her red and open her green light to the propeller. It also appears by the proof that the propeller's course was laid to avoid the scow, while the latter was under the starboard helm and still showing her green light, and I think the conclusion irresistable that, but for the scow's porting as she did, the propeller would have gone entirely clear of her, and there would have been no collision. The propeller, of course, had the right to pass the scow on either side she chose, and in laying her course she had the right to presume the scow would keep her course.

From the above premises two things are apparent:

1. That if the scow had kept the course she was on when the
275 Jay Cooke overtook her, and had not starboarded as she did, (and there is nothing to show that such starboarding was at all necessary to avoid collision with the Jay Cooke,) the propeller would not have been misled as to the scow's ultimate intentions, and would have had no excuse for attempting to pass her on her starboard side.

2. If, after the scow had starboarded, she had then kept her course, there would have been no collision, and hence that the immediate cause of the collision was the scow's porting as she did.

In arriving at the above conclusions, I have found it unnecessary to resort to that portion of the testimony on the part of the propeller in relation to the situation of the two vessels in the river, and relatively to each other, which was so ably and severely criticised by the learned advocate for the libellant.

As to the movements of the scow, I have drawn my conclusions solely from the libellant's own testimony, and have resorted to the testimony on the part of the propeller only for the purpose of ascertaining
276 when the scow was first made from the propeller, what light of the scow was then seen, and what action, on the part of the propeller, was predicated thereon.

Having found that the scow must be held responsible for the immediate cause of the collision, it remains to inquire into the conduct of the propeller, and see if she was guilty of any fault which contributed to the result.

The speed of the propeller, as we have seen, was nine miles an hour; confessedly she did not slacken that speed until the collision was inevitable, and then it did no good. Risk of collision was clearly involved from the time the propeller first made the scow, and therefore her failure to slacken speed was clearly a violation of article 16.

As to when the duty to slacken speed begins in such case, see opinion in the Lac La Belle and Milwaukie case recently decided in this court.

Where a vessel thus violates a positive rule of law, and a collision ensues, it will be presumed that such violation of law contributed to the collision, unless the contrary be made clearly to appear.

These rules were enacted to prevent the loss of life and de-

277 struction of property by collisions upon the water, and the only way to make them effectual is to insist on their rigid enforcement. There being nothing in the case to rebut the presumption above spoken of, the propeller must be held responsible for not slacking her speed as required by article 16.

Considering that it was in the night, or at least in the dim twilight, and in a narrow channel through which lay the pathway of the entire commerce of the lakes, and consequently thronged with vessels passing and repassing a large portion of the time, both night and day, as it actually was to a considerable extent at the time in question, the speed of the propeller was clearly too great for prudent and safe navigation, so much so as to constitute a fault on general principles, and for which she would be held liable, independent of article 16. (The St. Charles, 19 How., 108, 111; Union S. S. Co. vs. N. Y. & Va. S. S. Co., 24 How., 307; The Despatch, Swab., 138; The Germania, 21 L. T., N. S., 44.)

Both vessels being in fault, it results that there must be a division of the damages.

Let a decree be entered in favor of the libelants for a moiety of their damages, and referring it to a commissioner to ascertain and report the same.

278

279 *Opinion of Judge Longyear, in district court, June 17, 1872, on exceptions to commissioner's report of damages.*

The libel in this case was filed by August F. Ludwig and others, owners of the scow Miesel, for collision.

On the hearing it was decreed that both vessels were in fault, and that each must bear an equal moiety of the damages sustained. And it was referred to a commissioner to ascertain the damages. The commissioner having made his report, both parties have excepted.

Mr. Wm. A. Moore, (Moore & Griffin,) for libellants.

Mr. H. B. Brown, (Newberry, Pond & Brown) for respondents.

LONGYEAR, *J.*

Respondents' exceptions will be first considered.

The respondents' exceptions are quite numerous, and they generally call in question the amount of the allowances made by the commissioner rather than the principles adopted by him in making them.

280 "As a general rule," says Judge Betts, "a commissioner's report of damages upon the facts only will be adopted by the court unless errors or inadvertances in his valuation are clearly established by the excepting party. (The Narragansett, Olcott's Reports 388.) This is no doubt the correct rule, and it is the one adopted by this court.

Respondents' first exception was abandoned at the hearing, and the same is overruled.

The second exception is to the length of time allowed for keeping a light at night on the wreck of the scow while she lay sunken. The ground of the exception is that there was unnecessary delay in raising the vessel. It does not appear just when the contract for the raising was let, nor just how long it was before the work of raising was begun, only that it did not exceed a week. It does however appear that some work was done preparatory to the raising in the mean time. Upon the whole I think the proofs are too indefinite to warrant the court

281 in interfering with the commissioner's finding. The second exception is therefore overruled.

The third exception is to the allowance for labor of E. Cokely, 15¾ days getting out cargo, $21.52.

The ground of the exception is that the same labor is allowed for elsewhere. Captain Jex, of the scow, testifies that this labor was getting out stone (of which the cargo of the scow consisted) preparatory to raising her.

In item No. 34 there is an allowance for labor of Cokely, 20 days. As to this item Captain Jex testifies that the labor was "taking out stone and fitting up." I think it therefore clearly appears that the item excepted to is included in the latter. The third exception is therefore allowed.

The fourth exception is to the allowance made for account paid one Hackett, for stripping wreck and saving sails and spars, $66. The ground of the exception is that the services of the crew of the scow are charged for the same time, they being idle. The proofs shew that
282 the work done by Hackett was with the use of his tug, and the tug's crew. No objection is made that the use of a tug was unnecessary, and of course if the use of a tug was necessary the tug's crew would have to be paid. I think the exception is founded on a misconception of this fact. The fourth exception is overruled.

Exceptions fifth to fifteenth inclusive are to allowances for charges in consequence of the second sinking of the scow after she had been raised and brought to Detroit. The contract for raising the scow and delivering her in dry dock at Detroit was let for $1,200, which amount was allowed by the commissioner. On her being raised and brought to Detroit, it was found, on application at Clark's dry dock, that for some reason unexplained she could not be got into that dock at once. Thereupon she was taken to a wharf and moored, and, so far as appears by the proofs, left for the time being to her fate. Here she again
283 went to the bottom, and the items excepted to are for raising her from that second sinking. After allowing the full amount expended on account of raising the scow in the first instance, it seems to me that before an allowance can be made on account of a second sinking, a pretty strong case ought to be made showing that such second sinking was unavoidable by due care and skill, and that such care and skill were exercised.

The same means that raised the vessel and kept her afloat while being brought to Detroit would have kept her afloat until she could have been got into the dry-dock, and the extra expense for that purpose would, of course, have been allowable; and I think it was the duty of libellant', (for want of any other dry-dock within a reasonable reach, as to which, however, nothing appears by the proofs,) to have made use of those means, or of some other means, to keep her afloat. So far as the proofs show, nothing whatever was done to that end; but the scow seems to have been left without any attempt to keep her afloat, or any care or attention whatever.

The rule that damages which might have been avoided by
284 ordinary prudence, care, and attention are not recoverable, applies as well in the admiralty as at law, and I think there is sufficient in the case to shew that these damages might have been so avoided. (3 Ben. Rep., 228.) Exceptions five to fifteen, covering these allowances, amounting in the aggregate to $555.66, are sustained.

The sixteenth exception claims that certain deductions should have been made which were not made. All proper deductions appear to have been made by the commissioner, and this exception is overruled.

The seventeenth and eighteenth exceptions are to allowances for

repairs to sails and rigging, $1,274.21, and to hull, $3,312. The ground of exception is that these amounts are mere estimates; that it appearing by the proofs that the repairs had been all made, their actual cost is the only correct basis of allowance. This is no doubt the safer and more satisfactory rule, and the one which ought to be always adopted when the proof of such actual cost is reasonably accessible. In
285 this case the repairs were done by piece-meal, at different times and at several different places, and by a large number of different persons, and in part by the vessel's crew; and libellants did all in their power to preserve evidence of the various amounts expended, by way of entries in their books, bills, and receipts; but, unfortunately, these had all been accidently destroyed by fire, and they were absolutely without the means of specifying the items and amounts of the actual expenditures. The estimates upon which the allowances were based were made by persons whose competency and ability are not questioned, and the estimates themselves are not assailed as being in any manner incorrect or unreliable. Under these circumstances it would be unreasonable to require libellants to go through the vexatious, expensive, and, at best, uncertain process of obtaining the testimony or statement of the numerous persons, located, as they are, at various parts, from Port Huron to Buffalo, from whom they may have obtained
286 material or labor. At best, such process would involve the risk of almost certain loss to libellant'. And if either must lose, libellants, not being in fault for the loss of their vouchers, justice requires that the party causing the damage should suffer the loss. It does not appear, however, that there will be any loss to respondents by adopting the commissioner's finding, because there is nothing to show but that the estimates are perfectly fair and correct. (See the Narragansett, Olcott's Rep., 388–395.) The seventeenth and eighteenth exceptions are therefore overruled.

The nineteenth exception is to the allowance for demurrage, 58 days, at $18.44 per day, $1,069.52. The grounds of exception are two in number: 1. For too long a time; and 2d, for too large a sum per day. It is claimed that the delay before the raising of the vessel, and also the time spent in raising the vessel the second time, should be deducted. The question as to the delay has already been disposed of adverse to this exception when considering the second exception.

287 As to the time spent in raising the vessel the second time, there is nothing to show that the repairs could have been commenced any sooner than they were if the vessel had not so sunk, but, from what does appear, I think it is fair to presume that the repairs were commenced as soon as they otherwise would have been. I think, therefore, there is no ground for diminishing the time for which the allowance was made.

As to the rate per day allowed by the commissioner, I find from a calculation based upon the data in proof that the rate allowed is the exact net average daily earnings of the vessel for the entire season up to the time of the collision, and it is, therefore, as nearly correct as may be. The nineteenth exception is therefore overruled.

The twentieth and twenty-first exceptions are overruled. I have carefully examined the grounds of these exceptions, and I think that the commissioner has made all the deductions required or warranted by the proofs.

Libellants' first exception is to rate per diem allowed for de-
288 murrage, claiming that it is too low. This has been disposed of adversely to the exception in considering respondent's nineteenth exception.

Libellants' second and last exception is to the disallowance by the commissioner of $140 in money claimed to have been lost in consequence of the collision. The proofs upon this point are very indefinite and unsatisfactory, and I can see no good reason for interfering with the commissioner's finding. Libellants' exceptions are therefore both overruled.

It results that, on account of the allowance of the 3d exception, and of the 5th to the 15th exceptions, the sum of $577.18 must be deducted from the amount allowed by the commissioner. To this interest must be added from October 20th, 1870, to April 20th, 1872, one year and six months, at seven per cent. per annum, being for the same time and at the same rate interest is allowed by the commissioner, amounting to $60.60, making the total amount to be deducted $637.78. This
289 leaves $9,235.26 as the correct amount of damages sustained by the scow, with interest thereon to April 20th, 1872, the date of the commissioner's report.

A final decree must be entered in favor of libellants for one-half of the amount, viz, $4.617.63, with interest from the date of the commissioner's report, viz, April 20th, 1872, but without costs. The costs of the exceptions must be paid by libellants.

290

291 Circuit court of the United States for the eastern district of Michigan, ss:

I, Addison Mandell, clerk of said court, do hereby certify the above and foregoing document or record to be a true copy of the original record on appeal from the district court of the United States for said district, in the case of Augustus F. Ludwig et al., libellants and appellants, against the propeller Free State, her engines, &c., The Great Western Transportation Company, claimant and appellee, filed in said circuit court; and also of the original entries, evidence, files, and proceedings in said circuit court, on appeal in said cause, including the opinions of Hon. John W. Longyear, district judge, in the said district court, on final hearing and on exceptions to commissioner's report, filed in said circuit court; that I have carefully compared the same with such originals, and the same is a correct transcript therefrom, and of the whole of such original record, files, and proceedings.

In testimony whereof I have hereto signed my name officially, and affixed the seal of said court, at Detroit, this ninth day of October, in the year one thousand eight hundred & seventy-three.

ADDISON MANDELL, *Clerk.*

(Indorsement on cover:) No. 279. August F. Ludwig, Ernest Orttenberger, and Andrew Eymer, appellants, vs. The Propeller Free State, her engine, &c., the Western Transportation Company, claimants. E. Michigan C. C. U. S. Filed 18th October, 1873.

O

SUPREME COURT

—OF THE—

UNITED STATES

OCTOBER TERM, 1874.

AUGUST F. LUDWIG, et al.,

Libelants and Appellants,

VS.

PROPELLER "FREE STATE,"

WESTERN TRANSPORTATION COMPANY,

Claimant and Appellee.

Appeal from the Circuit Court of the United States for the Eastern District of Michigan.

IN ADMIRALTY.

BRIEF FOR LIBELANTS AND APPELLANTS.

W. A. MOORE, *Advocate.*

MOORE & GRIFFIN, *Proctors.*

DETROIT:

WM. GRAHAM'S STEAM PRESSES, 52 BATES ST.

1875.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, A. D. 1874.

AUGUSTUS F. LUDING,
ANDREW EYMER AND
ERNEST ORTTENDERGER,
Libelants and Appellants.

vs.

THE PROPELLER "FREE STATE," AND
THE WESTERN TRANSPORTATION CO.,
Claimant and Appellee.

IN ADMIRALTY.

Appeal from the Circuit Court of the United States for the Eastern District of Michigan.

STATEMENT OF THE CASE.

LIBEL.

Libel was filed by said libelants in the District Court of the United States, for the Eastern District of Michigan, to recover of the propeller "Free State," the property of the Western Transportation Company, for damages

done to the scow "C. G Meisel," the property of libellants, by collision between the said propeller and scow on the morning of the 17th of August, 1870.

The amount claimed by libelants is about $10,000.

The Libel sets up: That on the morning of the 17th of August, the scow was bound on a voyage from Kelley's Island, in the western part of Lake Erie, to Saginaw, in the State of Michigan, laden with a cargo of building stone. That between the hours of three and four o'clock of the morning aforesaid, and when the scow had proceeded on her voyage so far as to have reached Bois Blanc Island, in the lower part of Detroit River, and while running up said river with her proper signal lights properly placed and burning, having her usual and necessary complement of officers and men, properly stationed and carefully attentive to the safe navigation of their said vessel, she was approached by the propeller "Free State," bound down the river, which propeller was so recklessly navigated by those in charge of her, that she was made to run into and collide with the scow, striking her on her port side, a little forward of her main rigging, crushing in her side, causing her to fill and sink almost immediately. That for some time prior to the collision the scow had been running upon the starboard side of the channel, but as she approached the Red Can Buoy, so called, on the westerly bank of Detroit River, just above Amherstburg, the steamer Jay Cooke came along and passed her on her starboard side, close aboard. That immediately after said steamer had passed, the helm of the scow was ported and she was headed after the steamer, and was following in her wake. That almost immediately after, the propeller "Free State," which had been approaching, bound down the river, and having passed the said steamer Jay Cooke on her port hand, and approaching said scow so as to pass her also on her port hand side,

suddenly seemed to have changed her heading, and —as if under a starboard wheel—came on, and apparently without stopping or checking, struck the said scow and sank her as aforesaid.

See Folios of the Record, 11, 12 and 13.

Libelants charged upon the propeller faults, as follows:

1ST. That she was running without her proper signal lights.

2D. She had no competent look-out or watch upon deck attentive to duty.

3D. She did not continue and pass on the port side, as it was her duty to have done.

4TH. That she was not checked and stopped as she should have been, when a collision appeared probable.

5TH. That she was not equipped, manned and provided as required by law.

ANSWER.

THE ANSWER OF WESTERN TRANSPORTATION COMPANY SETS FORTH;

That on the day of the collision alleged in said libel, the said propeller, with her usual and necessary complement of officers and men, stationed at their proper posts, upon the lookout for the protection and safety of their vessel, and having their usual signal rights properly displayed and burning, was bound on a voyage from Chicago to Buffalo.

That at about 3.40 in the morning, and when said propeller had reached a point in the Detroit River a short distance above Amherstburg, and while proceeding at

her usual speed down, near the middle of the channel, the green light of a small vessel, which subsequntly proved to be the said scow, "C. G. Meisel," was descried from the deck of said propeller, bearing a little on the starboard bow. That as the said vessels approached each other, the said green light appeared to be keeping further to starboard, when, to make certain of giving her ample room, the wheel of said propeller was put to, starboard.

That the vessels approached each other until the green lights of the scow bore about 1½ points on the starboard bow of the propeller, when the scow began to swing across the track of the propeller, and immediately after shut in her green, and displayed her red light.

That upon observing this change, the wheel of the propeller was instantly ported, and her engine stopped and backed, but too late to avoid the collision, which ensued almost immediately thereafter; the vessels coming together as stated in the libel.

The answer alleges fault on the part of the scow, as follows:

1ST. That no proper lookout was kept on the scow.

2D. That she did not keep her course as she ought to have done.

3D. That she failed to have the proper officers and crew at their posts, and attentive to duties.

See Folios 20 and 21.

PROCEEDINGS.

Testimony was taken in the case, a hearing had, and decree made therein by the District Judge, in which he found the scow guilty of the

SECOND CHARGE OF FAULT.

contained in the answer, to wit: That she did not keep her course.

See Folio 275.

The District Judge also found the propeller guilty of the

FOURTH CHARGE OF FAULT, TO-WIT:

That she did not slacken her speed.

See Folio 277.

By the decision both vessels were declared to be in fault, and a decree ordered in favor of the libelants for a moiety of the damages.

Upon reference and report of clerk, the damages to scow were found to amount to $9,235.26, and a final decree was entered for libelants for one-half thereof, to-wit: $4,617.63.

See Folio 289.

From this decree and *the whole thereof*. the claimant of the propeller appealed to the Circuit Court of the United States for said District, and prayed to have said cause *heard anew* in the said Circuit Court.

See Folio 249.

A hearing anew was afterwards had upon appeal, and a decree entered in the Circuit Court reversing the decree of the Court below—dismissing the libel and granting costs against libelants in both Courts—and the case is now in this Court upon appeal from the said Circuit Court.

CONCEDED FACTS.

It is conceded that the scow was a medium sized scow, of 132 tons burthen, (*folio* 56) carrying a crew of seven, all told, and that the propeller Free State was one of the large Buffalo & Chicago propellers, of the burthen of 949 tons. (*folio* 81.)

That the collision took place on a bright, clear morning at about daylight -at a very short distance below the Red Can Buoy, so called, situated on the Canada shore, near the head of Bois Blanc Island, in the Detroit River.

That the channel at the point of collision is about 1000 feet in width.

That the wind was from the w. s. w. and was free to the scow in passing up the river.

That the propeller was passing through the water at about the rate of nine or ten miles an hour.

That the current at the place of collision is from two to three miles per hour.

That the scow was passing through the water at some five or six miles per hour, and

That the general course of the river in the vicinity of the collision is about south.

FACTS CLAIMED TO BE PROVEN.

First, That the scow, in passing up the river by Amherstburg, and to the point of collision, was kept upon the starboard hand side of the channel. At this point *vide* testimony, as follows:

ASSIGNMENTS OF ERROR.

We claim that the Circuit Court erred in the following particulars, to wit:

1. In finding the scow guilty of the fault of changing her course in view of the approaching propeller.

2. In finding the propeller without fault in running at full speed through a narrow channel through which vessels were passing and re-passing.

3. In finding the propeller without fault in approaching the scow at full speed until the collision was inevitable, and the slacking of speed would do no good.

Horatio Jex, Lookout on Scow.

Folio 67. Says, Opposite Bois Blanc we came up more on the Canada than the American side. We passed the docks at Amherstburg pretty close.

Folio 68. We were running right along the Canada bank—not very close to the shore, as the water is shoal there.

Folio 69. The collision took place a very little below the Red Can Buoy, pretty well to the Canada side of the channel. After keeping off and following in the wake of the "Jay Cooke," we were heading so as to very near clear the buoy in going up the river.

George Rutherford, at the wheel of the Scow.

Folio 32. Says, We were on the right hand side of the channel. The "Jay Cooke" passed us. After she passed us the captain told me to keep her away, which I did until he told me to steady her. When I steadied her I was heading for the "Jay Cooke's" stern.

James Barnes, Seaman on the Scow.

Folio 74. Says, We were on the Canada side of the river at the time of the collision I think about the length of the vessel below the buoy.

Samuel H. Beaton, Mate of the Scow, (not on watch)

Folio 28. Says, We were heading pretty well over to the Canada shore, the starboard side of the river. We were on the Canada side.

William Meek, Night Watchman at the Asylum at Amherstburg.

Folio 40. Says, I noticed the scow when she was coming up. She was on the Canada side, heading inside of the water mark. She appeared to be inside, hugging the shore pretty well.

Folio 44. She was coming directly up the stream. I didn't see her coming across at all. I couldn't say that she was two boat's lengths from the water mark.

Folio 47. The scow was heading inside of the water mark, and she appeared to be so from the time she left Hackett's dock. When she sank she was farther from the Canada shore than when the collision occurred.

Edmund Anderson, collecter of the Port at Malden.

Folio 49. Says, As the scow lay sunken, she was on the east side of the channel, very much nearer to the Canadian than the Island side. I should say she was 5/8 of the width of the channel from the Island.

B. Steambarge, Mill Watchman at Amherstburg.

Folio 51. Says, I was sitting on a pile of lumber near Thomas' mill, above the docks at Amherstburg. The scow appeared to be pretty well over on the Canada shore. The collision was a little below the buoy. Couldn't say certain, but I think it was pretty well towards the Canadian shore from the main channel, when they struck; the propeller looked as if she was coming right to the mill.

John A. Sloan, Master Mariner. (formerly resided at Malden).

Folio 76. Says, I saw the "Meisel" while she lay sunken, she was on the starboard side coming up, about one-third of the way from the Canada side and about four hundred feet from the docks.

Frank B. Hackett.

Folio 124. Says, I live at Amherstburg. Am master of Tug Prince Alfred. Saw the "Meisel" pass my tug. Should judge my tug was about one-eighth of a mile below the red buoy, the river there is between eleven and twelve hundred feet from the dock to the shore, and from the red buoy to the head of the island it would be about the same distance. * * The whole width of the river at the head of the island is between twelve and thirteen hundred feet; above the head of the island it is a mile. * * I should judge she passed up a quarter of the distance from the dock to the island. She was heading about for the can buoy, if anything a little inside.

Albert Harryman. Mate in charge of the Steamer Jay Cooke.

Folio 125. Says, I left the scow "Meisel" on my port hand. I went within forty or fifty feet of hear. I think she was what you might call pretty close on the Canada shore.

Folio 126. I think the scow was on the Canada side of the channel.

SECOND. The propeller came down the river about mid-channel as she approached the place of collision, as shown by testimony as follows:

Joseph Criqui, Master of the Propeller.

Folio 82. Says, I saw the "Jay Cooke" and the "Meisel" about the same time. At that time I was standing in front of the pilot house. We were a little below the lime kilns. I guess when I saw them the "Cooke" was a little on the port bow, showing a red light. The scow was very nearly ahead of me, showing a green light. This was after I began to get down about half way between the lime kilns and the buoy, you change your course to the westward from the lime kilns to the island. * * I think it is very near a mile from the lime kilns to the Red Can Buoy.

Folio 89. We were not running by any course. From Red Can Buoy to the lime kilns the channel is tolerably wide; pretty strait. *After you get below the lime kilns you steer straight for the head of the island.* * * When you get to the buoy you

have to starboard and straighten down the river. You change your course at the buoy about two points to starboard.

George Dissette, Second Mate on the Propeller.

Folio 100. Says, Was standing side of the Captain, forward of the pilot house. I was just about lime kilns when I first saw the "Meisel;" I saw the scow before I saw the "Jay Cooke," she was showing a green light then. Immediately after I saw the "Jay Cooke" coming up, she was well over on the Canada shore. She was showing a red light. I think she was showing both her lights, but I will not be positive.

Folio 101. The "Jay Cooke" was then a little forward of the scow, just to leeward, pretty well over to the Canada shore, so that we could not go between her and the Canada shore.

Folio 105. When I first saw the scow we were down a little below the lime kilns, probably a mile, or a mile and a half above the Red Can Buoy. We were going down about the center of the channel. * * Were steering by landmarks.

Folio 106. We were a little below the lime kilns when we made the scow. We were heading right down the channel.

Harley Glass, Lookout of the Propeller.

Folio 113. Says, I saw both scow "Meisel" and the "Jay Cooke" at about the same time, and reported them. I should think the scow was a little ahead when I first saw the light.

Folio 115. When we first made her she was perhaps a point and a half over our port bow. * * We were a little nearer the Canada shore, I think.

Harriman, Mate in charge of the "Jay Cooke."

Folio 126. Says, I should think she was coming down the middle of the channel.

THE ANSWER

Folio 20. Says, "That the propeller *while proceeding at her usual speed down, near the middle of the channel,* made the scow, etc.

THIRD. The collision actually occurred about by the Red Can Buoy.

Jex, Master of the Scow.

Folio 64. Says, The collision was probably not more than twenty, twenty-five or thirty feet from the buoy.

Folio 61. I was heading inside of the buoy when he hailed me to keep out of the way. Could not change my course any. When the "Free State" struck me I was right inside the range of the buoy. My head was, I wouldn't say about the vessel being all in, my bow was inside.

Jex, the Lookout on Scow.

Folio 69. The collision took place a very little below the Red Can Buoy, pretty well to the Canada side of the channel. It was pretty near about the length of the scow, I guess, below the buoy.

James Barns, Seaman on Scow.

Folio 74. Says, We were on the Canada side of the river, I think about the length of the vessel below the buoy.

William Meek, at the Asylum.

Folio 44. Says, The collision occurred about thirty feet below the buoy. They floated down for about one hundred yards from the buoy and the scow sank.

Folio 46. I was standing on the brink of the river bank, about thirty feet above the Red Can Buoy, and this collision took place about thirty feet below.

B. Steamberge, the Watchman at the Mill.

Folio 51. Says, The collision was a little below the buoy, and I couldn't say for certain, but I think it was pretty well towards the Canadian shore from the main channel.

John Sloan, Master of the "Dove."

Folio 76. Says, I saw the "Meisel" while she lay sunken.

Folio 77. I should think she was probably three or four times her length below the Red Can Buoy.

Frank E. Hackett, Master of Tug "Alfred."

Folio 124. Says, The collision must have taken place abreast of the "Can" buoy. When she sunk she was 400 or 500 feet below it, it was a little outside of the range of the Can Buoy—a little—very little.

Harryman, Mate in charge of the "Jay Cooke."

Folio 127. Says, I saw the Red Can Buoy plain enough when I went by the scow. I do not know whether the wheel hit it or not—the starboard wheel. I went outside the buoy—the channel side of course—and very close to it.

Criqui, Master of the Propeller.

Folio 86. Says, The collision took place very near abreast of the Red Can Buoy, though he thinks it was near mid-channel.

Folio 91. The first order I gave was starboard. That was as I was passing the "Cooke." The "Cooke" was probably the length of the boat or so—it might have been twice the length—above the buoy.

Dissette, 2d Mate of the Propeller.

Folio 104. Says, I should place the collision just below the Red Buoy—probably 30 or 40 feet; if anything it was nearer the Canadian shore. It was almost in the center of the channel.

Folio 110. I think the collision took place about 30 or 40 feet below the Red Can Buoy, on the Canada side; if anything, it was very near the center of the channel.

Glass, the Lookout on Propeller.

Folio 114. We were a little on the Canada side of the river, I should think when we struck very little beloy the red buoy.

Folio 116. We were about 10 rods above the buoy when the whistle was blown in answer to the "Jay Cooke's" whistle. I don't think over that.

FOURTH. The scow "Meisel had ported and swung off in the wake of the "Cooke" before the propeller starboarded.

1st.—ON THE PART OF THE PROPELLER.

Criqui, Master of the Propeller.

Folio 83. Says, When we got pretty near the "Cooke," I told the wheelsman to straighten down the river * * We commenced swinging.

Folio 86. The collision took place pretty near abreast of Red Can Buoy—I guess it was as nigh the middle of the channel as could be. My boat was swinging over to straighten down the river.

Folio 91. The first order I gave was starboard. That was about as I was passing the "Cooke" The "Cooke" was probably the length of the boat or so, it might have been twice the length of the boat and above the buoy.

Folio 97½. Q. If you came down there and only changed your heading a point, where would your heading carry you?

Ans. It would carry me a little below the head of the Island.

George Dissette, Second Mate of the Propeller.

Folio 107. Says, The first order given was to starboard the wheel. *I am not sure whether it was before blowing the whistle for the steamboat or immediately afterward, that the order was given to starboard; I think it was before.* I should think that under that order she swung about three-quarters of a point, or half a point. * * She probably swung a point under the starboard order—then the order was given hard-a-port.

Folio 111. When I blew the whistle, the "Jay Cooke" was coming up under her quarter or nearly abreast of her.

Harley Glass, Lookout of the Propeller.

Folio 113. Says, The first order I heard given after I saw them was starboard a bit. I heard a whistle, the order was given after the whistle. The "Jay Cooke" might have been within twenty rods of us then, perhaps.

Folio 116. We were about ten rods above the buoy when the whistle was blown in answer to the "Jay Cooke" whistle; I don't think over that. The "Jay Cooke" was then on our port bow, not very close to us. * * The "Jay Cooke" and the propeller were not side by side when we blew the whistle. I think the "Jay Cooke" was a *little up the river from us.*

Folio 117. When the order was given port, hard-a-port, the "Jay Cooke" was very near abreast of us—we were perhaps five boats' lengths from her.

2D.—ON THE PART OF THE SCOW.

Charles A. Jex, Master of the Scow.

Folio 58. Says, As soon as the "Jay Cooke" passed, * * I told the man at the wheel to keep her off a little, she swung right off until I told him to steady. * * At that time I saw the propeller off my port bow, wide open; she was not within hailing distance. I should think she was three or four hundred feet ahead of me and off my port bow, coming down. Before this, the "Jay Cooke," as she got abreast of me, blew a single whistle, which was one reason for me keeping off. The propeller answered with one whistle. * * After the whistle I watched the propeller, saw the "Jay Cooke" pass her pretty close aboard; I saw she was pointing right straight for me. * * I stepped forward and said Keep up, Captain.

Folio 60. At that time I was heading inside the buoy. I thought by porting pretty strong I might clear him, and I should have done so *if he had done the same thing, it would not have taken half his wheel to have thrown him clear of us.*

Folio 61. When I first ported to follow the stern of the "Jay Cooke," I was so close to the channel bank, as I said before, that I was a little doubtful about the "Jay Cooke" passing me easily.

Folio 65. The "Jay Cooke" was right abreast of me when she blew her first whistle and was answered by the "Free State." The "Jay Cooke" had *just nice room to pass me right close.*

Folio 66. Q. If the propeller had kept the course she was on when she passed the "Jay Cooke," how would she have passed you? Ans. She would have passed me well, clear on my port side.

H. Jex, Lookout on the Scow.

Folio 68. Says, The "Jay Cooke" blew her whistle. She kind of kept off, and we followed right in her wake. The "Jay Cooke" blew one whistle; she was then right abreast of us, inside.

Folio 69. I could see the propeller plainly at that time; if she had kept the course she was then on she would have passed our bow. * * We were coming up the bend of the river, and she would pass on the port side. * * After keeping off and following in the wake of the "Jay Cooke," we were heading so as to very near clear the buoy, going up the river. I suppose we would have to keep up a little more to clear it. The captain of the propeller said something, I can't tell exactly what; I think he said, Keep off; our captain told him he had lots of room.

Folio 70. Q. At the time of this hail to keep away, if the wheel of the propeller had been ported, in your judgment might she have passed you? Ans. If the wheel of the propeller had been ported she couldn't have helped to have passed clear; she had plenty of time, I think.

Folio 72. The first order that was given "to keep her up" was about as the "Jay Cooke's" stem lapped our stern. She ran under that that order until the "Jay Cooke" passed us, then there was an order to keep her off she ran under that order until the propeller was a short distance off.

Folio 73 After she had ported and swung after the "Jay Cooke," I could see the propeller, *if she had kept her course then she couldn't help passing us clear.*

James Barnes, Seaman on the Scow, and Off-Watch.

Folio 74. Says, I came out, looked around and saw a boat going up ahead of us. * * It was the "Jay Cooke," I looked to the weather bow and saw a propeller coming in three or four points I think, between fifty and one hundred feet off; she seemed to be coming along pretty lively.

Folio 75. I think the "Jay Cooke" was just about abreast of the "Free State" when I came upon deck, they passed quite aways apart. * * At the time of the collision we were steering right after the "Jay Cooke." * * I think we were heading pretty well after her.

Samuel Cokely, Seaman on the Scow, and Off watch.

Folio 24. Says, When I got on deck, the propeller was heading for us, to strike us in the fore-rigging. * * Should think she was about twice her length off.

Samuel H. Benton, Mate of the Scow and Off-watch.

Folio 27. Says, Mr. Rutherford awoke me, he sung out for us to turn out, there was a propeller going to run into us. I turned out and got on deck just as the propeller struck us.

George Rutherford, at the wheel of the Scow.

Folio 31. Says, When I first saw her she was on the port bow, about a point I should think, and we were heading in towards the land. The propeller was above the buoy, by the Insane Asylum, and we were on the right hand side of the channel coming up

Folio 32. Propeller was heading when I saw her first, as if she would pass a long way clear of us on the port side * * The "Jay Cooke" blew one whistle just about the time she was abreast of us, alongside. That whistle was answered by the propeller with one whistle. The "Jay Cooke" passed us. After she passed us, the captain told me to keep her away, which I did until he told me to steady her. When I steadied, I was heading for the "Jay Cooke's" stern. *At that time the propeller was about six or seven lengths off, and was still heading out to keep clear of us to pass on the port side.*

Folio 34. In my judgment, there was nothing to have prevented the propeller from passing us on the port hand; she could have done it very easily. * * In coming up the vessel was kept steady.

Folio 37. After the propeller blew the whistle, the captain told me to keep her away. * *

William Meek, Night Watchman at the Asylum.

Folio 40. Says, I was out on the bank of the river seeing the "Jay Cooke" go up. I saw the propeller "Free State" coming down. They exchanged signals thirty or forty feet I suppose, below the buoy; the scow was coming up, with a good breeze, heading in towards the shore * * As the scow came in closer, it appeared to me as if the propeller headed inside of the buoy.

Folio 41. I noticed the scow when she was coming up. She was on the Canada side, heading inside of the water mark.

Folio 44. At the time of the collision, she (the scow) was pointing in towards the shore, hugging the shore as much as pos-

sible. There is a bend in the river there, and she appeared to me as if she were running in. Her *stern* was pointed almost in a direct line with the course of the river—with the current.

B. Steambarge, Watchman at the Mill.

Folio 51. Says, The "Jay Cooke" passed in between the scow and the buoy. The "Jay Cooke" run pretty close to the buoy, then this other one came down just before they came together. I said to myself,—there is going to be a collision. Pretty soon they struck * * When they struck, the propeller looked as if she was coming right to the mill.

Frank B. Hackett, Master of the Tug Alfred.

Folio 124. Says. Q. How did she—the scow—pass up the channel?

Ans. I should judge a quarter of the distance across to the Island from the dock. I should judge she was heading about for the Can Buoy—if anything a little inside.

Albert Harriman, in charge of the "Jay Cooke."

Folio 125. Says, I blew one whistle to the propeller.

I was just astern of the scow at that time, when I passed her she was heading just about square up the channel. *Immedialely after passing her, it seemed as though she ported her wheel and was standing in towards us to come in under our stern, as I supposed.* The "*Free State*" *at that time was some twenty rods up the river or more* above me, I should think I passed within perhaps from four to five hundred feet. I think she was coming down about the middle of the channel. (*folio 126*). When *the "Free State was abreast of us the scow was heading in towards us, and not more than one point over our port quarter,* (*folio 128*). *When I saw her heading in astern of us, I saw both her lights; she was heading in towards us when the propeller "Free State" was nearly abreast of us.*

FIFTH. The propeller was making too great speed under the circumstances.

She was running through the water from nine to ten

miles, and with a current between two and three miles. She was going by the land at least twelve miles per hour. She was making this speed through a channel about 1,000 feet wide, with curves and angles. Through this narrow channel pass all the commerce of the northwestern Lakes, which commerce, according to a report lately made on the subject of bridging Detroit River, and according to a statement of the Hon. A. D. Conger, member of the Seventh District of Michigan, made last February, on the question of a Light-Ship at the mouth of Detroit River, requires the passing at the point of collision of 40,000 vessels during the eight months season of navigation, or over 166 vessels per day on the average, and a much larger number during the busiest portion of the season.

The commerce of the Lakes even in 1860, as stated in the case of Moore et. al. vs. Am. Trans. Co., 24 How 38, required 1600 vessels, with an aggregate tonnage of 400,000 tons, and which in 1871 must have nearly or quite doubled.

By reference to testimony it will be seen, as per Judge Longyear's opinion, (folio 277½) that no effort was made to check or slacken speed until the collision was inevitable, and then it was too late.

Criqui, Master of Propeller.

Folio 89¾. Says, When I first saw the scow, the "Jay Cooke" was just abreast of her, and they were both below the buoy. The "Cooke" blew one whistle. The scow was just crossing our bows, showing a green light. We were *then pretty well down, getting pretty close to the "Cooke."*

Folio 91, The first order I gave was to starboard; *that was about as I was passing the "Cooke."* The "Cooke" was probably the length of the boat, or so, off; it might have been twice the length above the buoy. I guess it could not have been three times the length of the boat. Under the order to starboard, she

probably swung a point; we did not run under that order at all, because the vessel changed her course. The next order I gave was hard-a-port * * The effect of that order just about steadied my boat until we struck the vessel.

Folio 98¾. Under the order to starboard, we ran only a minute; I couldn't say how many lengths of the boat—I ran probably two or three; she swung about a point during that time.

Folio 84. The scow was off about twice her length, I suppose, when she shut off the green light.

Dissette, 2d Mate of Propeller.

Folio 100½. Says, When I first saw the scow, her green light was about a point on our starboard bow, but as we came along the river it was about a point and a half when we blew our whistles. * * The "Jay Cooke" was then a little to leeward, and just ahead of the scow.

Folio 101. Q. Any order given to the wheelsman at that time?

Ans. *Yes sir*, the *Captain told him* to starboard his wheel to go between the "Jay Cooke" and the scow. The "Jay Cooke" was then a little forward of the scow just to leeward, pretty well over towards the Canada shore.

That this witness, as well as the master, swore very carelessly is shown by his statement at folio 103, and the correction made at folio 109.

The same witness says at

Folio 107¾. Under the order to starboard, which *he thinks was before* the whistle of the "Cooke" was blown, the propeller swung about ½ or ¾ of a point, and the order hard-a-port stopped her from swinging.

Folio 109. When this order, hard-a-port, was given, the "Jay Cooke" was passing us, probably not more than past us, just about past. The scow was then a length, or a length and a half of ourselves away.

Folio 110. While giving the order to starboard, and then hard-a-port, there was perhaps half a minute of time, perhaps not so long.

Folio 107½. When at about a quarter of a mile from the buoy, we were going *pretty* rapidly, *full head on.*

The engineer is the only officer on the propeller who could state, with any degree of accuracy, the speed of the propeller, or with certainty as to what was done under the orders "check," "stop," and "back."

None was produced on the trial of the case, nor was any explanation given for his absence.

It is not claimed, however, that the headway of the propeller was stopped when the vessels came together.

By the facts as above shown by the witnesses on the part of the propeller, she came down the river at full speed, without checking or slacking until within two or three boat lengths of the scow, and that, too, when the scow was nearly dead ahead, not more than one point on either bow.

It is true, statements were made that the scow was a point or more on starboard bow when the propeller starboarded, but that statement is so inconsistent with conceded facts, to-wit: the relative speed of the vessels, and the length of time it would require for the scow to have made the several changes of heading and position, that they will not be credited.

In view of the statements of Criqui, master of the propeller, (folio 90) that when the propeller exchanged signals with the "Cooke," the latter was abreast of the scow, and both nearly dead ahead of the propeller, and of the further fact that the propeller continued her speed until within two or three lengths of the scow, (folio 92½) it can scarcely be claimed that such speed could be considered prudent or safe navigation of the propeller.

There is some evidence that the master of the propeller had been drinking.

William Meek, Watchman at the Asylum.

Folio 42½. Says, I saw the Captain of propeller at the dock at Malden about half past six.

Q. What was his apparent condition then as to intoxication?

Ans. He seemed to me as if he was under the influence of liquor.

Folio 46. I says to the captain of the propeller, "This is a sad affair." He says, "It was not our fault, the d——d fools should have kept the right course." I said to him, from what I had seen I considered they were on the right course. He made no reply.

Edmund Anderson, Collector of the Port.

Folio 48 ½. Says, I saw the Captain that morning first between four and five. He called at my place. He was either under a state of nervous agitation or he had been drinking. * * I also saw him about half past six. * *

Folio 49. He had evidently been drinking then.

Charles A. Jex, Master of the Scow.

Folio 68. I says, "Captain, you have done a pretty job now." "God d—n you," he says, "why didn't you keep out of the way?"

It is true, Criqui, the master of the propeller says at,

Folio 87½. I hadn't tasted a drop of anything for four days.

But (at *folio* 94¾) he admits he drank two or three times at Malden that day.

In view of the fact that a vessel had had been sunken, and the wife and child of the Master had been lost thereby, the conduct and language of the Master of the propeller, can be accounted for only on the theory that he had been drinking, or was an exceedingly reckless man.

If the above evidence establishes the approach of the two vessels, and their navigation immediately preceding the collision, as claimed by libelants, then we respectfully submit,

I.

The District Judge was in error in finding the scow guilty of the fault of changing her course in view of the approaching propeller.

1ST. The only evidence showing the first alleged change of course, is the statement of Jex, the lookout, who says, (folio 68½) when the "Jay Cooke" was right abreast of us, the captain said "keep her up a little;" also on cross-examination he repeats the same statement in substance, (folio 71½).

This statement is not corroborated by any one but; on the contrary, Jex, the master, and Rutherford, wheelsman of the scow, swear that the scow was kept steady on her course on the starboard hand side of the channel up the river.

It is shown by Jex, master, Rutherford, wheelsman, Jex, look-out of the scow and Harriman, mate of the "Jay Cooke" that *immediately* after the "*Jay Cooke*" *passed*, the scow swung off under a port wheel, heading for the stern and in the wake of the "Jay Cooke," and that evidence clearly shows that such swinging off for the stern of the "Cooke," was before the propeller starboarded.

2D. Even though the scow did "keep up a little" while the "Jay Cooke" was passing her on her starboard side, close aboard, was such "keeping up a little" and then porting as soon as the scow passed, a violation of Article 18 of the Act of 1864?

Neither the scow or propeller were running compass courses, the scow had the wind free and was following the starboard hand channel bank, and when below the buoy, and between it and Malden, she should show her starboard light, a part of the time at least, to the pro-

propeller while running down the channel below the lime kilns, until she should be near the buoy.

(Folio 89½). The Master of the propeller swears that there is a change of heading of two points at the buoy; he knew also that the scow had the wind free and could continue her course up the channel bank as she had done, and although the scow might have been showing her green or starboard light when below the buoy, the Master of the propeller was not misled by that fact, for he could see the scow, he knew the course of the river, if followed, would require the scow soon to port and show her red light. He had no right to suppose that the scow would continue that heading any longer than to reach the buoy, at which point she would port and stand along on her course on the starboard side of the river. This change of heading was an adherence to, rather than a departure from her course.

Course, in maritime language, is direction of motion, line of advancing, point of compass; there the course was up the starboard-hand side of the channel, out of the main current and of the way of vessels descending in mid-channel.

3D. The decision of the District Judge (at folio 272½) states, that after the "Jay Cooke" had passed the scow, she ported to get into the wake of the steamer, and while sailing under this order the propeller came down upon her.

The decision (at folio 274½) also states, that the course of the propeller was laid to avoid the scow while the latter was under the starboard helm caused by "keeping up a little" to let the "Jay Cooke" pass.

This latter statement is not sustained by the evidence above referred to, in which the full watch of the scow, and the mate in charge of the "Jay Cooke" state, that *after the scow had ported,* and *while heading for the*

stern of the "Jay Cooke," the propeller was still heading out as if to pass the scow on her port hand.

4TH. It will doubtless be claimed that as the District Judge found the scow guilty of the violation of Article 18, in changing her course, and as the Circuit Judge upon appeal concurred in such finding, that this Court will not enquire into such finding.

We are aware that there are several decisions of this Court averse to disturbing of facts concurred in by the District and Circuit Courts, but this Court does not refuse to look into such findings, and, if manifestly wrong, correct them.

The "Quickstep," 9 Wall. p. 669.

The "Ariadne," 13 Wall. pp. 475–479.

In the latter case the Court says, "The right of appeal to this Court is a substantial right and not a shadow. It involves examination, thought, and judgment.

Where our convictions are clear, and differ from those of the learned Judge below, we may not abdicate the performance of the duty which the law imposes upon us, by declining to give our own judicial effect."

In this case, the fact that the scow changed her heading while the propeller was approaching is not denied, but what is claimed is, that such a change of heading under the circumstances shown, was not a change of course under Article 18.

5TH. We are not unmindful that there are several decisions of this Court, among which are

The "Wm. Bagley," 5 Wallace, p. 412.

The "Quickstep," 9 Wall. p. 672.

The "Maria Martin," 12 Wall. p. 41.

holding that because libelants took no appeal from the decision of the District Court, they are concluded from the discussion of the alleged violation of Article 18, by the scow.

In this connection we call attention to the Appeal of Claimants, to the Circuit Court, found at Folio 248½, by which they "appeal from the said decree and from every part thereof, and pray that the said decree be reversed."

The case was heard anew entirely. The Counsel and Circuit Judge considered the finding of the District Judge, both as to the fault of the scow, as well as that of the propeller, to have been open to discussion and subject to reversal.

II.

The propeller continued to approach the scow at full speed, and did not slacken until the collision was inevitable, and then it did no good; risk of collision was clearly involved in her near approach to the scow, and long before the propeller made any effort to slacken speed, and therefore her failure to slacken speed was clearly a violation of Article 16, so found the District Judge at Folio 276½.

1ST. This opinion was based upon the facts found by the District Judge at the trial, which facts may be enumerated, in part at least, as follows:

(*a*). That the propeller was running at full speed, with the Master in front of the Pilot house, and *where he could not ring to check or stop without going around and up on to the Pilot house.* (*folio* 83½).

(*b*). That the statement of the Master and the Second Mate as to how the scow bore as the propeller approach-

ed, were utterly inconsistent with conceded facts, and were not credited by the District Judge.

See Opinion, Folio 275½.

(*c*). That no effort was made to slacken speed until too late to avoid collision,

(*d*). That the conduct and language of the Master at the time of, and after the collision, was entirely consistent with the charge of reckless navigation.

These facts were elicited by oral examination and cross-examination of witnesses in open Court before the District Judge, and which, according to the decision of this Court in the case of Walsh et al. vs. Rogers et al. 13 Howard, p. 284, is almost the only method of eliciting truth in such cases.

No testimony was taken on appeal in this case, but the case was heard solely on the evidence taken in the District Court.

Judge Emmons in the Circuit Court, upon appeal, concurred with the District Judge, that the scow was guilty of fault in having changed her course, but did not discuss that branch of the case. He discussed the single question of the safety of the speed of the propeller, and her duty to slacken.

At page 21 of Opinion, he says:

"As the 'Cooke' passed the 'Free State,' and while the 'Meisel' was displaying a green light, indicating as she was actually running a *course to the northwest, directly across that of the "Free State,"* the latter, as was not only her right, but her duty, starboarded, in order to pass the 'Meisel,'

While the ships were in this position, and in *such close proximity* as to make collision inevitable from the movement, the 'Meisel' ported, and displayed her red

light to the propeller, ran across her bows, and was sunk so instantly as to result in loss of life. The instant the red light was opened to the 'Free State,' every effort was made to arrest her progress. The morning had so far advanced that vessels could be seen a mile away."

He says further:

"We can discover in the facts as we have stated them, no duty on the part of the 'Free State' to slacken her speed until the unfavorable presentation of the red light of the 'Meisel' *immediately under her bows suddenly prompted the attempt* As everything possible *under the circumstances was then done*, we hold her to be without fault."

If the scow had in fact crossed the bows of the propeller, and had been well off on her starboard bow, showing a green light, then the proposition might be true, but that she was not, will be shown to a mathematical certainty, by reference to the map, and by the consideration of the fact of the time required for the scow to make the alleged changes of position.

2D. It is not enough to show that the collision could not have been prevented at the moment, if it might have been by previous precaution.

1 Par. on Ship Ad. 529 and note.

The "Virgil" 2 Wm. Rob. 201, 205.

In this last case the court says,

"If a vessel charged with having occasioned a collision, should be sailing at the rate of eight or nine miles an hour, when she ought to have proceeded only at the speed of three or four, it will be no valid excuse for the master to aver that he could not prevent the accident at the moment it occurred, if he could have used measures of precaution that would have rendered the accident

less probable. It may undoubtedly be important that a voyage should be completed in the most speedy manner, but such speed must be combined with safety to other vessels sailing in an opposite course. This is the doctrine of the Courts of Admiralty."

Also New York vs. Rea, 18 Hon. p. 224.

3D. The cases cited by the Circuit Judge, as analogous to the case at bar, are cases where the officer of the steamer did not slacken speed because he was deceived or misled by the light of the vessel he was approaching.

The "Rob Roy," (3 Wm. Rob. 191) was a case of collision in the open sea, and where the green light of the "Unicorn," the colliding vessel, was extinguished, the red light concealed, and the steamer was especially excused from fault for not slacking speed, because it was not safe to do so.

Can any such reason be found for the unabated speed of the "Free State?"

The case of the "Scotia," (7 Blatchford, *308) was the case of a collision with the ship "Berkshire" in the open sea on a dark night. The "Berkshire" had only a small bright light fastened low down at her anchor stock, so low down and so small that the "Scotia's" watch took it to be a bright light a long distance off—nothing but this small light was visible, and the watch of the "Scotia" being deceived and misled by it, ported and continued his speed.

The District Judge, Blatchford, holds the "Scotia" free from fault for not slowing; but at p. 328 he says,

In different circumstances, he would have found the "Scotia" in fault for not slowing or stopping, when her watch *first discovered the light of the "Berkshire."*

Judge Woodruff, on appeal, approves of the reasoning of the District Judge, affirms the decision; but he put it upon the ground that the Watch of the "Scotia" was deceived and misled by the bright light of the "Berkshire," supposing it to be the head-light of a steamer *a long distance off*. See pp. 338, 339 and 340.

Can there be any doubt, on the reasoning given, what the decision would have been had the "Scotia" approached with unabated speed to within two, three, or four lengths even, of a vessel dead ahead, or nearly dead ahead, and in full view?

4TH The Circuit Judge has referred to a large number of cases, many of them familiar, but if there is one of them which permits a propeller running in a channel one thousand feet wide, at the rate of twelve miles per hour, to approach another vessel in full view, and dead ahead, or nearly dead ahead, to within two, three or four lengths, without slowing or checking, and still be held free from fault, I have failed to find it.

5TH. The case of the "Milwaukee," referred to by Judge Emmons, was a collision between the steamship "Milwaukee" and the propeller "Lac La Belle," in St. Clair River, where both were found in fault for approaching each other in a channel at too great speed. Judge Longyear uses language, as follows: "The obligation of a steamer approaching another vessel to slacken speed attaches the moment risk of collision is involved. Such vessel is not allowed to wait to see if there is absolute danger of collision before obeying the law. Danger of collision is, of course, included in risk of collisions, but it is not all there is of it. There is never danger of collision other than by inevitable or inscrutable accident, where all fully and completely observe the law. Danger of collision begins only when one vessel or the other begins to depart from the rules estab-

lished by law. Risk of collision begins the very moment when the two vessels have approached so near each other and upon such courses, that by a departure from the rules of navigation, whether from a want of good seamanship, accident, mistake, misapprehension of signals, or otherwise, a collision might be brought about. It is true that, *prima facie* each has a right to assume that the other will obey the law; but this does not justify either in shutting his eyes to what the other may actually do, or in omitting to do what he can to avoid an accident made imminent by the acts of the other. I say the right above spoken of is *prima facie* merely, because it is well known that departures from the law not only may, but do, take place, and often, risk of collision begins the moment the two vessels have approached so near that a collision may be brought about by any such departure, and continues up to the moment when they have so far progressed that no such result could ensue."

This decision was never appealed from.

In the cases of the "Cognac" and "Concordia," cited from Holt's Rule of the Road, pp. 133 and 142, the question of unsafe speed was not involved.

Reversed 19 Wall 41. 54.

The case of the "Wenona," 8 Blatchford, 499, is analogous in some respects to this case; except that to have the schooner well off on the starboard bow of the propeller, at such a distance as created no duty on the part of the propeller to check and slow, is a mathematical impossibility in this case.

Many of the cases cited by the learned Circuit Judge are for the purpose of showing that the duty of slowing, in cases of vessels approaching in a manner to involve risk of collision, is not contemporaneous with the duty of porting.

III.

The finding of the District Judge, at folio 277½, is in accordance with the facts, and should be affirmed. It is,

"Considering that it was in the night, or at least in the dim twilight, and in a narrow channel, through which lay the pathway of the entire commerce of the lakes, and consequently thronged with vessels passing and repassing a large portion of the time, both night and day, as it actually was to a considerable extent at the time in question, the speed of the propeller was clearly too great for prudent and safe navigation, so much so as to constitute a fault on general principles, and for which she would be held liable, independent of Article 16."

In this case the propeller was approaching a steamer and a sail vessel about abreast, not but a short distance apart. She was also approaching a bend or angle in the current, which required a change of heading of at least two points, yet this large propeller continued with unabated speed, with her master standing at some distance from the bell-rope, which he must reach before he could give any signal to check or stop, until he came so close to the scow that he had no time to change, or affect the headway or the heading of the propeller before the vessels came together.

The citations from Loundes on Collision clearly sustains the decision of the District Judge.

The "Gazelle," 2d, Wm. Rob. p. 519,

was held in fault for the reason that she did not slack her speed when approaching the light of a vessel at anchor which was somewhat obscured, but which her

watch would have been more likely to have seen had her speed been less.

The "Iron Duke," 2d Wm. Rob. p. 384.

The steamer was held in fault when running with unabated speed in a track, or channel, much frequented by vessels.

The "Ceres," Swaby, 250.

was held in fault for rounding to, in order to come to anchor without slacking speed, and without due caution.

The "Eclipse," 1 Lush, 423.

A rate of speed which may not in itself be improper, may become so if continued after another vessel is sighted, in such a position as to involve risk of collision.

The "Eclipse" was held in fault because her engines were kept going at full speed after coming in sight of a vessel until too late to avoid her.

The "Birkenhead," 3 Wm. Roberts, p. 79.

The steamer was condemned for not slowing or stopping her engines in a case of doubt, in order to ascertain the true position of the other vessel.

The learned Circuit Judge refers to his own decision in the case of the "Sunnyside," now before this Court, illustrating his view of the duty of a vessel having the right of way, to keep her course.

The "Sunnyside" was pursuing her voyage through Lake Huron. Her master made the green light of a tug about dead ahead. The tug was lying by, waiting for a tow. The schooner was held to her course, ran into and sunk the tug.

The District Judge divided the damages, holding both in fault.

The learned Circuit Judge, on appeal, reversed the decision and dismissed the libel, and held * * * that parties should be held *inexorably to the rules of navigation, and not anticipate a departure from such rules by other vessels, until actual present peril demonstrates that further adhesion is beyond all question dangerous.*

This doctrine, if adopted by this Court, would have a tendency to weaken all proper efforts and use of precautionary measures for prevention of collisions. It would recognize the right of a vessel obeying rules technically, to run another down which might come in her way, in consequence of the non-observance of those rules.

The conclusion of the opinion of the Circuit Judge, is the expression of a doubt of the correctness of the position by him taken. It is by no means so strongly asserted as the opinion of the District Judge.

We submit that the decision of the District Judge, as to the fault of the steamer, is fully sustained by the authorities.

The Ship "Pennsylvania," 24 How. 307 and 313.
The "St. Charles," 19 How. 108 and 111.
The "Juliet Erskine," 6 Notes of Cases, 634.
The "Rose," ~~7 Jur. 881~~. 2 W. Rob. 1. 5. 6
" Huntsville & Blatchf 228-31
" Maria Martin 12 Wallace 31-36
Santiago de Cuba 10 Blatch 65-5.

All these cases sustain the doctrine that where a vessel is approaching another vessel, and a risk of collision is involved—that is, where, by some departure by the other vessel from the rules of navigation a collision

might be brought about—all proper precaution should be taken.

In the case of the "Syracuse," 9 Wall. 676, where a steamer at full speed was attempting to pass in close proximity to other vessels, although the way seemed clear, such attempt was held as gross and wanton recklessness.

In the language of the Court, she has no right to hurl herself like a projectile, into the midst of the vessels before her, taking the hazard of the consequences, and thus imperiling herself and them, together with the the lives and property on board. Such continuance of speed constitutes contributory fault, and makes the steamer liable under the cases of,

21 How. 569.
"Gray Eagle," 9 Wall., 512
The "Ariadne," 13 Wall., 479.
Bougainville 5 P.C.A. 316. 323

The opinion of the District Judge is based upon a full hearing of the facts by a rigid examination and cross-examination of witnesses in open Court, and by a full and careful consideration of such facts, and of the rules of navigation and law bearing upon them, and we submit that such opinion and decision is entitled to the affirmation of this Court.

W. A. MOORE,
Advocate.

MOORE & GRIFFIN,
Libelants' Proctors.

SUPREME COURT OF THE UNITED STATES.

AUGUST F. LUDWIG, ERNEST OTTENBERGER, AND ANDREW EYMER, APPELLANTS,

VS.

THE PROPELLER FREE STATE, HER ENGINE, &c., THE WESTERN TRANSPORTATION COMPANY, CLAIMANTS.

BRIEF ON THE PART OF THE CLAIMANT.

GEORGE B. HIBBARD, for the Claimant,
BUFFALO, N. Y.

SUPREME COURT OF THE UNITED STATES.

AUGUST LUDWIG, ERNEST OTTENBERGER, AND ANDREW EYMER, *Appellants*,

vs.

THE PROPELLER FREE STATE, THE WESTERN TRANSPORTATION COMPANY, *Claimant*.

Brief on the Part of the Claimant.

GEORGE B. HIBBARD, *for the Claimant, Buffalo, N. Y.*

The leading facts upon which the single point mainly contended for in this brief arises, are understood by me to be substantially as follows:

The steam propeller Free State, well manned, &c., was proceeding down the Detroit River at a speed of about nine miles an hour (*Record, printed page* 25; *original* 81), and under circumstances in no sense indicating danger or involving difficulty of navigation. While so proceeding she made the steamer Jay Cooke and the scow Meisel coming up the river, the Jay Cooke bearing on the port bow of the Free State, and showing a red light to the Free State, and the Meisel nearly dead ahead of the Free State, showing a green light to the Free State. (*Printed pages* 25, 26, 27, 30; *original*, 82, 83, 89, 100). The Jay Cooke and the Meisel were both proceeding up the river. The Jay Cooke passed the Meisel on the Meisel's starboard side (*Printed pages* 11, 17; *original*, 32, 51.) As the Jay Cooke was about to pass the Meisel, the Meisel starboarded to give the Jay Cooke more room to pass. (*Printed pages* 22, 91; *original*, 68, 71, 272.) The Jay Cooke sounded one blast of her whistle as a signal, and this signal was answered by the Free State. (*Printed pages* 19, 11, 12, 22, 20; *original*, 59, 32, 68,

82). After this, the Meisel ported her wheel and changed her course, and again ported her wheel and changed her course still more, making her change of course under the port wheel several points, and (as it is claimed) threw herself across the bows of the Free State. After her change of course she exhibited her red light to the Free State. (*Printed pages* 6, 12, 19, 22, 91, 23, 13, 20; *original*, 12, 32, 58, 71, 272, 72, 33, 37, 60.)

When the Free State was about passing the Jay Cooke, the master of the Free State ordered her wheelsman to straighten her down the river. (*Printed page* 26; *original*, 83.) The Meisel was then about a point and a half on the Free State's starboard bow, and was showing a green light to the Free State. (*Printed pages* 26, 30, 31; *original*, 83, 100, 101.) As the propeller commenced swinging to port, the scow made her change of course by porting her wheel, as has been already stated, and exhibited her red light to the Free State. (*Printed pages* 26, 30, 31; *original*, 83, 84, 98, 101). Under this indication the master of the Free State ordered her wheel hard aport, and rung the engine bell to stop and back. (*Printed pages* 26, 28, 31; *original*, 84, 92, 102, 103.) The collision soon after occurred.

The single point mainly contended for in this brief is that:

The speed of the Free State was not, under the circumstances a fault, and she should not be, in any measure, made responsible for the collision.

I. The decree of the District Court was one dividing the damages (*Record, printed pages* 38, 83, 93; *original*, 130, 277, 244, 245); and, as the libellants did not appeal from the decree of that court, they cannot now claim that that decree was wrong.

Inman vs. Beck (*E. L. R.*), 2 *Priv. Council App.*, 25.

This is very apparently so, for the reason that, as the appellants in this court did not appeal from the decree of the District Court, they could not have attacked the decree of the District Court in the Circuit Court—could only have been heard in support of that decree,

The Quickstep, 9 *Wallace*, 665, 672,

and therefore cannot contend here that the decree of the Circuit or District Court, as against the Meisel, was wrong.

II. Under the rules governing such cases, the Free State was not in fault, under the circumstances, on account of her speed.

1. In this connection, the language of several of the articles of the act of Congress, providing rules for avoiding collisions will require consideration:

"STEERING AND SAILING RULES.

"*Two Sailing-Ships Meeting.*

"Article 11. If two sailing-ships are meeting, end on or nearly "end on, so as to involve risk of collision, the helms of both "shall be put to port, so that each may pass on the port side of "the other."

"*Two Sailing-Ships Crossing.*

"Article 12. Where two sailing-ships are crossing so as to "involve risk of collision, then, if they have the wind on differ-"ent sides, the ship with the wind on the port side shall keep out "of the way of the ship with the wind on the starboard side, "except in the case in which the ship with the wind on the port "side is close-hauled and the other ship free, in which case the "latter ship shall keep out of the way. But if they have the "wind on the same side, or if one of them has the wind aft, the "ship which is to windward shall keep out of the way of the ship "which is to leeward."

"*Two Ships Under Steam Meeting.*

"Article 13. If two ships under steam are meeting, end on "or nearly end on, so as to involve risk of collision, the helms of "both shall be put to port, so that each may pass on the port side "of the other."

"*Two Ships Under Steam Crossing.*

"Article 14. If two ships under steam are crossing so as to "involve risk of collision, the ship which has the other on her "own starboard side shall keep out of the way of the other."

"*Sailing-Ship and Ship Under Steam.*

"Article 15. If two ships, one of which is a sailing-ship, and "the other a steamship, are proceeding in such directions as to "involve risk of collision, the steamship shall keep out of the "way of the sailing-ship."

"*Ship Under Steam to Slacken Speed.*

"Article 16. Every steamship, when approaching another "ship so as to involve risk of collision, shall slacken her speed, "or, if necessary, stop and reverse; and every steamship shall, "when in a fog, go at a moderate speed."

"*Construction of Twelfth, Fourteenth, Fifteenth, and Seven-*
"*teenth Articles.*

"Article 18. Where, by the above rules, one of two ships is "to keep out of the way, the other shall keep her course, subject "to the qualifications contained in the following article:

"*Proviso to Save Special Cases.*

"Article 19. In obeying and construing these rules, due "regard must be had to all dangers of navigation, and due "regard must also be had to any special circumstances which "may exist in any particular case, rendering a departure from "the above rules necessary, in order to avoid immediate danger."

13 *Statutes at Large*, 60, 61.

2. It will be observed, that in the statute the words "involving risk of collision," are used in several relations,—twice (in the 11th and 13th Articles) in connection with the word "*meeting*," twice (in the 12th and 14th Articles) in connection with the word "*crossing*," once (in the 15th Article) in connection with the words "*proceeding in such directions*," and once (in the 16th Article) in connection with the word "*approaching*." In all except the last, the words "risk of collision" are used with respect to the *courses of both the vessels* between which collision may happen—their *courses*, which *if pursued*, would involve risk of collision. They are so used in all cases, except the last, not with reference, strictly, to a *danger* of collision, to the doing a particular thing which the *danger* makes proper or necessary, but for the purpose of fixing certain duties upon vessels in certain situations as to their keeping out of the way of each other,—rules for their observance in certain situations that no danger of collision may arise. These duties thus prescribed, in the fair import of the language, and in reason, begin before actual danger arises, and refer to action to be taken before the single fact of the *approach* of a steam vessel toward another vessel, makes the slackening of speed a proper and practical thing with respect to the situation. The words "risk of collision," as used in the last article, refer to a situation when the "*approach*" of a steam vessel toward another vessel—not the *courses* of the two vessels, but the *approach* of the steam vessel—such approach toward another vessel, as if each vessel performs its duty under the then circumstances, would, if continued, be dangerous. The language of the articles themselves, therefore, considered with reference to the practical situation of the vessels and what should properly be done under the different circumstances, contemplated by the different articles, plainly shows that the acts to be done with respect to avoiding collision under the different articles, are to be done at different times—that those to be done under the 11th, 12th, 13th, 14th, and 15th of the Articles, are to be done to avoid risk of collision dependent upon courses to be pursued, and necessarily before actual danger of collision really arises; and that the act to be done under Article 16—the slackening of speed—is to take place, whenever the *approach* of the steam vessel toward

another vessel (for it is to be observed that the approach relates to either steam or sail vessels) if continued at the same speed, in and of itself, would create practical, substantial danger of collision, although the steam vessel approaching should do all her duty in other respects, and the vessel approached, after the moment when the duty to slacken speed under Article 16 commenced, should also do her duty—that "risk of collision" in Article 16 means actual, substantial danger, then and there, and from the nearness of the vessels, when the duty to slacken speed under that article begins, and not as in the other articles, "risk of collision" to arise if certain courses (the object of the other articles being to provide for the courses of the vessels, and therein differing from Article 16) are pursued—that the duty to slacken speed under Article 16, does not arise at the same time with reference to the situation of the vessel, as the other duties under the other articles referred to, nor until there is actual, practical danger from the nearness of the vessels, although both, after that moment, should do their duty in other respects. That this is so, is apparent for the reason that the duty of changing course begins before there is real risk of collision, and so that no real risk shall arise,

The Nichols, 7 *Wallace*, 656,

and it cannot be the rule that before any actual risk of collision,—any actual danger of collision arises, speed should be slackened. Were such the rule, a steam vessel would, *in all cases*, be obliged to slacken speed as soon as she changed her course, involving, it is claimed, an absurdity. The object of slackening speed also shows that such is not the rule. Why slacken speed at all? Either to prevent the vessels from coming in contact by the mere lessening of the speed, or that there may be more time in which to perform unusual manœuvres, made necessary by the situation. It must appear from this consideration alone that the duty of slackening speed, under Article 16, does not begin at the same time that the duty to change a course, for instance, begins; and it must also appear, from these considerations, that slackening speed, under Article 16, is not required, unless it, and of itself, is a proper and practical thing, required by

the exceptional circumstances of the particular case, and when the ordinary rules with reference to the duties to be performed by vessels *as to their courses* when performed, are not sufficient to prevent collisions.

Such was not this case. The Free State performed her duty as to her course. The Meisel did not perform her duty *as to her course.* If she had, there would have been no collision. The duty of the Free State, to slacken her speed, did not begin until the exceptional situation arose, caused by the Meisel, by her wrong change of course. The Free State was not in fault, therefore, for not slackening speed before the Meisel changed her course. She did take steps to stop and reverse as soon as she could after the Meisel changed her course. It is, therefore, confidently contended that, under the language of the articles themselves, the Free State was not in fault with respect to her speed.

III. That the rule is, as above indicated, and that the duty to slacken speed does not arise until it is proper and practical, and when the observance of the duties of the vessels respectively, *as to their courses*, under such circumstance, is not sufficient to avoid the collision, is, it is claimed, settled by authority.

The Jesmond and The Earl of Elgin (*E. L. R.*), 4 *Priv. Counc. App.*, 1.
The Wenona, 8 *Blatchford*, 499.
The Scotia, 14 *Wallace*, 170, 181, 182.
The Potomac, 8 *Wallace*, 590, 592.
The Steamboat Northfield and The Steam Tug Hunter, 4 *Benedict*, 112, 119.
The Queen, 8 *Blatchford*, 235.
The U. S. Grant, 6 *Benedict*, 465.
Peck vs. Burns, 5 *Benedict*, 537.

IV. Under the facts in the case, the Free State was not in fault, and cannot, in any measure, be made liable for the collision.

1. The circumstances under which the vessels were at first navigating the river, were in no sense dangerous. The scow had a fair wind. There was no throng of vessels to make the navigation difficult. The ordinary rules of navigation with respect

to the courses of vessels were entirely sufficient, had they been observed, to have prevented the collision. Speed in itself is, of course, not a fault. There was nothing, in the circumstances, making the ordinary speed of the propeller, a fault. Had not the Meisel changed her course, the vessels would have passed a proper distance apart from each other. There was no manœuvre required upon the part of the Free State, other than the change of course, to avoid the Meisel. There was no manœuvre required on the part of the Free State as to the only other vessel in that vicinity—the Jay Cooke—which would create any risk of collision between the Free State and the Meisel. The Free State had no right to doubt, and was bound to conclude, that the Meisel would obey the rules of navigation,

The Wenona, 8 *Blatchford*, 499, 508,

and not commit her indisputable fault of changing her course—the worst, the only fault, under the circumstances, she could commit. Had she not committed this fault, the vessels would have passed each other, green light to green—beneath most familiar rule, under circumstances of most perfect safety. (*American Rule of the Road*, 226). By committing this fault, the Meisel threw herself suddenly and directly across the course of the Free State, and, notwithstanding all that was so properly done upon the part of the Free State, although orders were given that her helm be put aport and her engine stopped and reversed (and had she been in error in anything then done, it would not have been a fault, under familiar rule), the collision happened. And what was its cause? Certainly not the speed of the Free State. That speed in no degree contributed to it or was an element in the fault that caused it. It was caused by the wrongful act—the breach of statutory duty, on the part of the Meisel; and policy, reason and justice require that she should be held as solely responsible for the collision.

The Potomac, 8 *Wallace*, 590, 592.
The Scotia, 14 *Wallace*, 170.
The Queen, 8 *Blatchford*, 235.
The U. S. Grant, 6 *Benedict*, 465.
Peck vs. Burns, 5 *Benedict*, 547, *and other cases cited above.*

V. That the speed of the Free State, before the Meisel changed her course, is not a fault, has been already seen. The Free State did not commit any other fault before the Meisel's change of course. Indisputably the Meisel's fault was committed—a grave fault—a breach of statutory duty. What then is the rule under such circumstances? "*Faults*" in cases of collision are and should be but few—plain, easily definable, easily to be known under the circumstances under which they may occur, that plain men, compelled to rapid action, may readily avoid them. The rule, it is contended, is this: That where a fault has been committed by one vessel—a first fault—that vessel shall be held solely responsible for an ensuing collision, unless she can show also that the other vessel has committed a *fault*—one of those few things which are faults—subsequent to, and in no degree attributable to the first fault.

The Lion, 1 *Sprague*, 40.
The Bay State, 3 *Blatchford*, 48.
The U. S. Grant, 6 *Benedict*, 465.
Peck vs. Burns, 5 *Benedict*, 537.

But the Free State did not even make any mistake, much less commit a fault. Without fault, down to the moment of the Meisel's change of course, as soon as that change was apparent she took proper steps to avoid a collision, if possible, with the vessel which had so recklessly thrown herself across the Free State's course. Those steps were unavailing, and the collision, caused solely—accurately considering the elements of the *cause* of the collision—by the fault of the Meisel—the "immediate cause of the collision,"—to employ the language of the judge of the District Court, (*Record, printed page* 92; *original* 275, 276), took place. For that collision, it is once more repeated, the Free State is in no measure responsible, and the decree of the Circuit Court in the cause should, it is most respectfully submitted, be affirmed, with costs,

GEORGE B. HIBBARD,
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Buffalo, N. Y.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM A. D. 1874.

No. 279.

AUGUST F. LUDWIG,
ERNEST OTTENBERGER, AND
ANDREW EYMER,
Appellants,
vs.
THE PROPELLER "FREESTATE,"
THE WESTERN TRANSPORTATION CO.,
Claimant.

In Admiralty.

Appeal from the Circuit Court for the Eastern District of Michigan.

CLAIMANT'S BRIEF.

NEWBERRY, POND & BROWN,

Claimants' Proctors.

HENRY B. BROWN,

Advocate.

DETROIT.
O. S. GULLEY'S STEAM PRESSES, 10 & 12 LARNED STREET, EAST.
1875.

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Libellants and Appelants,
vs.
THE PROPELLER "FREESTATE,"
THE WESTERN TRANSPORTATION CO.,
Claimant and Appellee.

In Admiralty.

Appeal from the Circuit Court of the United States for the Eastern District of Michigan.

BRIEF FOR CLAIMANT.

This is a libel *in rem* for a collision between the scow "C. G. Meisel" and the propeller "Free State," which took place on the morning of the 17th of August, A. D. 1870, opposite Fort Malden, in Detroit river, and within a few rods of the Canadian bank. There is a slight angle in the shore here, and vessels ascending the river usually keep a course about N. ½ W. until reaching this point, when they take a course N. by E. The weather was fine, and at the time of the collision day had commenced to break, and vessels could be

seen at the distance of a mile without lights. There is scarcely any dispute regarding the facts of the case. With one exception, we shall not question the findings of the District Court, and are content to argue the case as one of law.

These facts are substantially as follows:

THE SCOW.

The scow "C. G. Meisel," a vessel of 132 tons, was, at the time of the collision, bound on a voyage from Kelley's Island, in the northwestern part of Lake Erie, to Saginaw, Michigan, laden with a cargo of forty cords of building stone. (Folio 11.)

She entered Detroit river in the morning, between three and four o'clock, and was pursuing the usual course between Bois Blanc Island and the village of Amherstburg. (Fol. 56.) The exact compass course is not sworn to by any of the witnesses on the scow, as she was sailing by landmarks rather than by compass. (Fol. 58.)

The wind was about W. S. W., free to the scow, which took it over her port-quarter. (Fol. 12.) There is some dispute with regard to the distance from the Canada shore at which the scow was passing up the river. Some of the witnesses place it near the center of the river, between the Canada shore and the island; others place it about one third of the way across from the Canada shore. We do not regard it as of any particular consequence in this case, and are content to accept the finding of the District Judge, that "the scow kept up along nearer to the Canadian bank." (Fol. 272.)

Shortly after passing the village of Amherstburg, the steamer "Jay Cooke" came out from the dock and passed the scow upon her starboard side, about two or three lengths of the steamer distant. (Fols. 32, 51, 58 65, 68, 125.) The propeller "Free State" was then in sight, coming down the river. (Fols. 59, 65.) As the "Jay Cooke" came up to pass her the scow starboarded, to give the "Jay

Cooke" more room. (Fols. 68, 71, 272, 128.) As the "Jay Cooke" passed she gave one blast of her whistle, as a signal to the propeller. This signal was answered by a single whistle. (Fols. 59, 32, 68, 82.) After the "Jay Cooke" had passed, the scow ported, in order to get into the wake of the steamer, and as the master said, because the "Jay Cooke" had blown a single whistle. (Fols. 12, 32, 59, 71, 272.) A second order to port, or "keep off," was given as the propeller approached nearer. (Fols. 72, 33, 37, 60.) It was while sailing under these port orders the propeller, which had intended to pass between the steamer and the scow, came down upon her, striking her upon the port side very close to the main rigging, at an angle of about 45 degrees.

(Fols. 60, 12, 24, 33.) Under the starboard order, given when the "Jay Cooke" came alongside, the scow swung about one point and a half to port; and under the port orders, given after the steamer had passed, she swung from four to six points to starboard. (Fols. 37, 72.) After the first order to port was given, the propeller hailed the scow, and she ported the second time, and as the wheelsman says, swung well off. (Fol. 33.) The scow was sunk by the collision, and two or three of her crew were drowned.

THE PROPELLER.

The propeller "Free State," a vessel of 949 tons burthen, was at the time of the collision bound on a voyage from Chicago to Buffalo, in good condition and with a full crew. The master was standing in front of the pilot-house; two seamen were on the lookout forward (fol. 81), beside the usual wheelsman and engineer. She was coming down the river at about nine miles an hour. (Fol. 81.)

When a little below the lime-kilns, so called, she made the "Jay Cooke" and "Meisel" coming up the river, the "Cooke" on her port bow showing a red light, the scow very near dead ahead, showing a green light. (Fols. 82, 89, 100, 113.) The propeller was

then about half-way down between the lime kilns and the Red-can buoy, near which last the collision occurred. (Fol. 82.) As the "Cooke" came up the river she gave one blast of her whistle, which was answered by a similar signal. (Fol. 82.) She was at that time about a quarter of a mile off. (Fol. 82.) At the time this signal was given the scow bore very nearly dead ahead, showing a green light, and standing upon a course so far across or athwart the course of the propeller that the master could see through between her spars. (Fol. 83.) When the propeller was about passing the "Cooke," the master ordered the wheelsman to straighten her down the river and leave the vessel to windward. (Fol. 83.) The vessel was then a point and a half on the starboard bow of the propeller, showing a green light. (Fol. 83.) Just as the propeller commenced swinging to port, to give the scow ample room for passing, the scow suddenly changed her course, under the port order already mentioned, and suddenly exhibited her red light. (Fols. 84, 91.) The master of the propeller instantly ordered his wheel hard aport, and rung his engine-bell to stop and back. (Fol. 83.) Before, however, the propeller had swung more than a point to starboard, or before her speed could be materially diminished, the collision occurred. Indeed, the scow was not more than two or three times her length off when she shut out her green light and exhibited her red. (Fols. 84, 86.) This was the first indication of her change of course.

Upon this state of facts the District Court found both vessels in fault—

The scow for changing her course;

The propeller for not slackening speed.

A final decree was rendered against the propeller for $4,617.63, one half of the damages suffered by the scow. From this decree the owners of the propeller appealed to the Circuit Court. The owners of the scow did not appeal.

The Circuit Court reversed the decree of the District Court, holding the scow solely in fault for the collision.

The District Court held in substance that *risk of collision* was "involved from the time the propeller first made the scow, and therefore her failure to slacken speed was a violation of article 16," which provides that every steamship, when approaching another ship so as to involve risk of collision shall slacken her speed, or, if necessary, stop and reverse.

The Circuit Court, however, held that *risk of collision*, within the meaning of article 16, was not involved until the scow changed her course and exhibited her red light; that so long as the scow exhibited a green light the propeller had a right to assume that she would pursue her proper course up the river, and that the propeller was at liberty to pursue her own course with undiminished speed.

One fact is inadvertently found by the District Judge (fol. 277) which there is no testimony to support, viz., that the channel was thronged with vessels, passing and repassing. There is no evidence whatever that any other vessels were in the channel at the time of the collision than the three already mentioned. The circuit judge so held, and remarked that if the fact had been as found by the district judge, he would have promptly affirmed the decree. There was some dispute as to the course of the scow coming up the channel, and the master seemed desirous of conveying the impression that he was very near the Canada shore, arguing from that fact the duty of the propeller to take the other side. As before remarked, we do not consider this material; but the evidence shows that he was from one third to three eighths of the way across the river. (Folio 49.)

1. She entered about mid-channel, if anything, toward the Canada side. (Fols. 71, 67.)

2. The "Jay Cooke" passed between her and the Canada shore, having two scows' length between them. (Fol. 32, 68.) One witness says two or three lengths.

3. Mr. Steambarge says she passed pretty well out, and about where the common run of vessels go. (Fol. 52, 53.)

4. Captain Jex places it from 200 to 250 feet. (Fol. 57.) Beaton places it at 400 feet. (Fol. 30.)

Horatio Jex says he was not running very near the Canada shore. (Fol. 68.) That his scow sank almost immediately, and from one third to three eighths the way across.

There was plenty of room for vessels to pass between the buoy and the shore, and they were constantly passing there. (Fol. .)

The case, then, is substantially this :

A propeller, descending the Detroit river at her usual speed, makes the red light of an ascending steamer, slightly on her port bow, and the green light of a scow, nearly dead ahead, and pursuing a course which would lead her well off to starboard. She exchanges a single blast of the whistle with the steamer, ports her wheel slightly to pass her, and then starboards, to give the scow ample room. At this moment the scow—then one and a half points off the starboard bow of the propeller, showing a green light, and with half a mile of open water before her—supposing the whistle was intended for her, ports two to two and one half points, and exhibits her red light. The master of the propeller hails her to keep her course—instantly rings to stop and back—but the scow again ports, and throws herself directly across the bows of the propeller, and the inevitable result follows.

Libellants having failed to appeal from the decree of the District Court, are estopped not only to deny that the scow was in fault for changing her course, but are also estopped to deny any of the facts found by the district judge which bore upon this question of fault.

See—

The City of Antwerp, L. R. 2, P. C. 25.

I.

WE CLAIM THAT THE PROPELLER WAS NOT GUILTY OF A FAULT IN MAINTAINING HER USUAL RATE OF SPEED UNTIL THE CHANGE OF COURSE ON THE PART OF THE SCOW INDICATED POSITIVE DANGER OF COLLISION.

We might content ourselves upon this point by referring to

the opinion of the Circuit Judge, which was not sent up with the record, but which is annexed to and made a part of this brief. We will, however, discuss the matter somewhat more at length, and cite the principal authorities upon the subject.

This case involves the consideration of the following articles of the collision act:

ART. 15. *If two ships, one of which is a sailing ship and the other a steamship, are proceeding in such direction as to involve risk of collision, the steamship shall keep out of the way of the sailing ship.*

ART, 16. *Every steamship, when approaching another ship so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse;* and every steamship shall, when in a fog, go at a moderate speed.

In this connection we also quote the following articles:

ART. 11. If two sailing ships are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

ART. 13. If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

ART. 18. Where, by the above rules, one of two ships is to keep out of the way, the other shall keep her course, subject to the qualifications contained in the following article.

We claim that the propeller, having made the green light of the scow directly ahead, and knowing that she was pursuing a course which would carry her clear of the propeller, and did in fact pursue that course until she had opened her green light one and a half points upon the bow of the propeller, had a right to assume that she would continue that course and beat out her tack. There is no evidence that there was any obstacle in the river, or anything to prevent her continuing on her course until the propellller had passed her.

The duty of keeping her course involved the incidental duty of beating out her tack.

While a sailing vessel is under no obligation to run herself

aground or into danger, she must not embarrass the manœuvres of the steamer by changing her course, unless there is some necessity for so doing.

The "Argus," "Olcott," 304.

Collision between two sloops in the North river. The proposition is conceded that it is the duty of the vessel having the right of way to run out her tack (p. 314,) and that it is her duty so to do.

The "Empire State," 1 Ben., 57.

Collision in Hell Gate, between schooner and steamer. Held, That the duty of a sailing vessel to beat out her tack when meeting a steamer is unquestionable; but held that in this case the schooner had a right to come about, as keeping her course would endanger her going ashore. P. 60-61.

The "Bridgeport," 6 Blatch., 3.

Held, That the schooner should run out her tack notwithstanding the signal of the steamer for her to come about. This was a collision near Hell Gate, in the East river.

The W. C. Redfield, 4 Bin., 227.

The Scotia, 5 Blatch. 227.

Held, that the sailing vessel discovering the light of a steamer nearly ahead on a dark and cloudy night has no right afterwards to change her course on the idea that she could not be seen by the steamer. This case was was afterwards affirmed by this court, 14 Wall. 170.

The Potomac, 8 Wall. 590.

Rule enforced that a schooner has no right to change her course and throw herself in the way of a steamer.

Such fault being established, the scow was solely to blame unless she can prove us guilty of a subsequent fault not produced by and in no way attributable to the first fault.

Lowndes on Coll., 88.
The Lion; 1 Sprague, 40.
The Anglo-Norman; 1 Newb., 492.
The Ariadne; 2 Ben., 42.
The Miranda; 1 Newb., 227.

If the scow does not keep her course she has no right to question the propriety of our order to starboard. A steamer

meeting a sailing vessel is bound to take precautions to avoid her, but she may take such precautions as she chooses, either by starboarding or porting and the propriety of the order can not be questioned by the vessel in fault.

The Great Eastern; Holt., 172.
The Deprey; 1 Sprague, 245.
The Oregon; 18 How., 570.
St. John vs. Paine; 10 How., 557.
Newton vs. Stebbins; 10 How., 586.
The City of New York; 1 Cliff, 75.
The Carrol; 1 Ben., 286.
The R. B. Forbes; 1 Cliff., 331.
The Leopard; Davies, 193.
The Northern Indiana; 16 L. R., 434.

It was found by the District and Circuit Judges, and we believe no claim was made to the contrary, that the propeller was guilty of no fault after the change of course on the part of the scow had become apparent. But it is claimed that her general speed was too great and that there was a "risk of collision," within the meaning of article 16 as soon as the duty of avoiding the scow became obligatory under article 15.

The logical result of this doctrine is this: That whenever under articles 11 and 13 the duty of porting becomes obligatory, or whenever, under article 15, a steamship becomes bound to take measures to avoid a sailing ship, the duty of slackening speed also becomes obligatory.

To illustrate—Two steamers are meeting end on upon the open sea. It is the duty of each at once to port and pass to the right. Will it be seriously claimed that it is the duty of each also to slacken speed? and yet if the words "risk of collision" are used in the same sense in the 16th article that they are in the 13th, the duty of slackening speed becomes obligatory at the same moment as the duty of porting.

We claim, however, that by the words "*risk of collision*," as used in the 16th article, is meant, not the risk of collision which is involved when the duty of porting becomes obligatory, but an immediate *danger of collision* resulting from some false movement on the part of the other vessel.

A judicial interpretation was put upon these words in the case of the

Earl of Elgin, L. R. 4,, P. C. I

This was a collision between the steamships "Jesmond" and "Earl of Elgin," off the coast of Yorkshire. The course of the "Jesmond was N. N.W. The course of the "Earl of Elgin" was S. E. Each vessel saw the other at a distance of about a mile and a half and the court held that they were meeting "end on" within the meaning of article 13. The "Jesmond," in obedience to that rule ported her helm, but the "Earl of Elgin" starboarded instead of porting, and thereby put herself clearly in the wrong or became prima facie responsible. The Court of Admiralty found that the "Jesmond" erred in porting so slightly as she did and that both vessels were in fault in not easing and stopping their engines before the collision took place.

On appeal to the Privy Council, however, the court reversed the decision of the High Court of Admiralty and found the "Earl of Elgin" solely in fault. We quote from the language of the court: "The learned Judge, however, as their Lordships understand his judgment, would couple the insufficiency of the porting with the assumed obligation to slacken speed under the 16th article, and finds that under the whole circumstances of the case the "Jesmond" ought to have slackened as well as the "Elgin," and that by reason of that fault on the part of the "Jesmond," the damage, according to the rule of admiralty, "is divisible between the vessels."

After finding that the "Jesmond" was not in fault for insufficiency of porting, the court proceeds to quote the 16th article and says: "The article imposes this obligation (of slackening speed) only upon a ship which is approaching another ship "so as to involve a risk of collision." It may be said that there was a moment at which the two vessels were in that condition, for if they had not been in that condition they would not have been within article 13. But it seems to their Lordships, taking the two articles together, that article 16 only applies when there is a *continuous* approaching of the two ships, and, indeed, it was candidty admitted by Dr. Deane that there was not an obligation to slacken speed the moment the two vessels sighted each other and when the first porting took place.

If their Lordships are right in their view of what was then done, the original risk of collision was *determined* when the vessels were brought port light to port light. Nor can it be said that after that porting the "Jesmond" was approaching the "Earl of Elgin" so as to involve a risk of collision unless the true construction of the term risk of collision be that for which in one part of his argument Dr Deane contended. As their Lordships understood his argument,

he was prepared to insist that the term must be taken to include either a default on the part of the other vessel to do what the 13th rule required of it or the disabling of that vessel by some accidental cause of which the "Jesmond" was not and probably could not be aware. It does not appear to their Lordships that the first of those elements can be reasonably imported into the risk of collision. There is no foundation in fact for supposing that the "Earl of Elgin" was prevented by any accident from doing what she ought to have done, nor are their Lordships aware that in obeying these rules it is necessary for persons navigating vessels to foresee and provide against every possible accident."

But it being conceded that it is not the duty of a steamer to slacken speed because and as soon as it is her duty to take measures to avoid a sailing vessel, when does this obligation arise? Clearly not until the sailing vessel has done something to indicate that she is herself violating the rules of navigation.

The "Scotia;" 7 Blatch., 308.

This was a libel by the owners of the "Burkshire" against the steamer "Scotia," to recover the value of the ship and her cargo, sunk by a collision in the open ocean. The Berkshire did not carry the lights required by law, but a white light, which being seen by the steamer, induced her to believe that the sailing vessel was a steamer, whose side lights had not come into view, and the steamer made such movements as were proper for her to make in meeting a steamer. A collision ensued between the two vessels. Held, "That whether the lights she saw near the horizon was on a steamer or on a sailing vessel, no duty to slacken speed or change the course of the "Scotia" arose until there was some reason to apprehend a collision. The duty first called into exercise on discovering the light was to observe it closely, to see whether or not there was reason to apprehend such. If she saw the light and observed it diligently, without having reasonable ground for apprehending danger, no duty to change her course or to slacken speed was created."

This case was affirmed by this court, 14 Wall., 170. Mr. Justice Strong, in delivering the opinion, says: "This duty of a steamer, to keep out of the way, implies a correlative obligation to the ship to keep her course and to do nothing to mislead, Nor is the steamer called to act except when she is approaching a vessel in such a direction as to involve a risk of collision. She is required to take no precautions when there is no apparent danger."

"Was, then, the 'Scotia' in fault?"

"We have already said that she was not bound to take any steps to avoid a collision until danger of a collision should have been ap-

prehended, and we think there was no reason for apprehension until the ship's light was seen closing in upon her." "All her duty at first was to watch the light, in order to discover certainly what it was and to observe its course, and notice whether it crossed her own course." "It is not the law that a steamer must change her course, or must slacken her speed, the instant she comes in sight of another vessel's light, no matter in what direction it may be." "It is, therefore, no fault that, seeing the ship's light off her port bow, apparently at a distance of several miles, the 'Scotia' continued her course without slackening her speed until that light began to close in upon her."

Williamson vs. Barrett; 13 How., 101.

Collision on the Ohio river, between the steamboats "Barbour" and "Paul Jones." The "Barbour" was descending near the middle of the river, the "Jones" ascending near the Indiana shore, heavily laden. As the boats approached, the "Jones" changed her course across the river toward the middle, thereby endangering a collision. As soon as this was discovered, the descending boat stopped her engine, rang her bell and floated, as the custom of navigation required, leaving to the other boat the option to pass either her bow or stern. Held, That she was not in fault for not backing, because the movements of the ascending boat were uncertain, and her backing might have resulted in damage.

The "Northfield" and "Hunter;" 4 Ben., 112.

Libel filed by the schooner "Hero" against the sidewheel steamer "Northfield" and steam tug "Hunter," for a collision between the Battery and Governor's Island, in the harbor of New York. The schooner was in tow of the Hunter, lashed to her port side, on her way from Hoboken to anchorage below Governor's Island. The "Northfield" was a ferry-boat, on her way to Staten Island. The courses of the "Hunter" and "Northfield" were crossing, the "Northfield" having the "Hunter" on her starboard side, whence it became the duty of the "Northfield," under article 14, to keep out of the way of the schooner. It was clearly the duty of the "Hunter" to keep her course. The "Northfield" saw the "Hunter," and recognizing her duty to keep out of the way, ported sufficiently, in view of her own speed and of the course which she saw the "Hunter" was making, to enable her to pass under the stern of the "Hunter" and her tow; but when the "Hunter" and her tow were about 300 yards distant from the "Northfield," the "Hunter," instead of keeping her course, stopped her engine. The moment this was seen by the "Northfield" her engine was slowed and stopped, and an effort made to reverse it, and her helm put hard aport. The engine of the "Hunter," after being stopped, was backed, and then started ahead again before the collision. Held, That the "Hunter" was in

fault for stopping. When she stopped there was no risk of collision in fact, if no obstacle were to be interposed in the way of the "Northfield" as she was swinging. The "Northfield" shaped her course from the time she first saw the "Hunter" so as to pass under her stern, and would have done so had the "Hunter" not stopped.

This case virtually decides that the words "risk of collision," as used in the 16th article, are not to be taken in the same sense as when used in the other articles. Here was a clear case of risk of collision under article 14, and the "Northfield," recognizing her duty to keep out of the way of the Hunter, ported her helm, with the intention of going under her stern; but the court held that at this time there was no apprehension of danger, and no risk of a collision within the meaning of article 16, and that the "Hunter" should have kept her course. The risk of collision spoken of in articles 13 and 14 evidently commences when the necessity of porting becomes apparent to vessels meeting or crossing each other. But the same words in the 16th article refer only to that apprehension of danger caused by a false movement on the part of one of the vessels. In other words, the court condemned the "Hunter" for doing exactly what it is claimed the "Free State" should have done in this case.

The "Wenona;" 8 Blatch., 499.

This was a collision between a steamer and schooner, upon Lake Erie. The Circuit Court found that upon the testimony the schooner changed her course, and thwarted prudential and proper movements which the steamer had made to avoid her. Upon the theory adopted by the court, the steamer saw the torchlight held over her port bow. About two minutes elapsed, and she saw the green light very nearly if not dead ahead. "With a green light ahead, it would pass by even if he did nothing to make its avoidance more certain. But the lines of approach might be very nearly coincident. It would possibly do no harm to make a slight sheer to port and open that green light on his starboard bow a little. It would apparently make a collision impossible, and he did it. Out of abundant caution. he did what was not strictly necessary, but what it was eminently safe to do. This was not a fault. The moment after he gave the order to port, and I think before the propeller could have felt her helm effectively, the second flash light, followed by the further observation of the green light on his starboard bow, showed that he had

judged correctly, and was clear of all conceivable danger if the schooner kept her course." "There was no reason for delay. It was enough that he had seen the flash light, waited two minutes, and then seen the green light crossing his course. What should he wait for? If it is answered that he should have waited on a conjecture that possibly the schooner might change, the answer is, he knew it was the duty of the schooner not to change her course. He had not only the right, but was bound to assume in his conduct that she would not." "Shortly after this sheer of the propeller, after observing the green light of the schooner opening on his starboard bow, he sees a change. The red light of the schooner appeared."

The court found no fault with the propeller because she did not slacken speed before the red light became apparent. It is true the decree of the Circuit Court was reversed in this court, but upon the theory that the schooner did not change her course. No question was made here that if the fact had been found that the schooner had changed her course the steamer would not have been condemned for not slackening her speed.

Upon a careful examination of the cases in respect to speed I find that the speed of a steamer must be slackened only under the following circumstances:

1. When going in a fog.

2. When passing through a narrow channel or river encumbered by vessels.

3. When approaching vessels whose movements are uncertain.

4. When there is *risk of collision*, in other words, when an approaching vessel does something that indicates a departure from the rules of navigation or a misunderstanding of the signals, but I find no case holding that the propeller is under obligation to slacken speed when an approaching vessel is apparently keeping her proper course and no evidence exists that she intends a departure from it.

In the last case the rule probably is that the steam vessel should be so navigated that a competent man governing the speed of the vessel would, in the exercise of ordinary caution and judgment, conclude that the vessel could avoid a collision should danger arise when both parties observed the rules of navigation. Certainly the officer of the propeller in this case had no reason to suppose that he could not avoid a collision

with the scow, and most certainly he could have done it had it not been for the scow's fault. There would not have been the slightest danger of collision had it not been for this fault.

Nor was there any fault in the speed of the propeller as she came down the river. There were no other vessels in the channel and no extraordinary difficulty in its navigation. Certainly there was no fault in this speed *as to the scow*, and without fault *as to her* the propeller can not be made liable for any damage she has sustained and which has been caused by her own fault.

Had there been a fleet of vessels as to any of the vessels constituting which from the propeller's speed there would be danger of collision, as for instance should there be a reasonable probability that certain manœuvres would be required to avoid certain of the vessels constituting the fleet they obeying the rules of navigation, which manœuvres a given rate of speed it might reasonably be supposed might make more difficult. then such speed might be a fault. But that was not the case here. The officer of the propeller had no reason to suppose that any manœuvres would be required which his rate of speed would make more difficult; in fact, no such manœuvre would have been required had not the scow committed her fault.

The leading cases upon the subject of speed are as follows:

Steamer Louisiana vs. Fisher, 21 How. 1.

In this case the steamer descried a black object ahead, but the officer could not tell whether it was a vessel at anchor or under way. Held that the steamer should have stopped until it was certain of the course of the other vessel.

In the present case the light and course of the scow were both seen and no uncertainty existed with regardto them.

The James Watt, 2 W. Rob., 271.

The master testified that when he discovered the sailing vessel he ported his helm without waiting to ascertain her course.

Held, that he should have slackened speed until he was able to discover the course the sailing vessel was steering. See also similar case of The Birkenhead, 3 Wm. Rob., 75.

Nelson vs. Leland, 22 How., 48.

The steamer seeing a light ahead mistook it for a place of landing. He could not ascertain the precise locality. It proved to be a vessel in motion. Held, he should have stopped his boat. This was a collision upon a river, a point of land interposing between the steamer and the light.

Ward vs. the Rossiter, Newb. 225.

Steamer entering the harbor of Chicago in the night at a speed of three and a half to four miles an hour, while another steamer was in the act of turning just above the bend of the river, came into collision with the latter at that moment lying across the river. The river was full of craft. Held, that the speed of the steamer was too great under the circumstances.

The Buffalo, Newb. 115.

A steam propeller was descending the River St. Clair in a night so dark that objects could be seen but a short distance, at a speed of eight miles an hour, and had discovered below her the lights of a number of vessels. Held, that she was in fault for not slackening her speed until she had passed. It was so dark they could not discern boats but a few rods off, and fifteen minutes before he observed a number of vessels lying at anchor and made a number of lights ahead.

McCreadie vs. Goldsmith, 18 How., 89.

A large steamer was coming down Long Island Sound on a foggy morning, at a speed of sixteen miles an hour, in the direct track of the coasting trade, and ran down a vessel lying at anchor. Held, the steamer was in fault.

The fog evidently disposes of this case as well as a very large number of others not cited here.

The Steamboat New York vs. Rea, 18 How., 223.

A brig lying at anchor. A steamer comes down the river, wind and tide in her favor, with heavily loaded barges in tow. She undertook to clear the vessels at anchor in the river at a speed of eight to ten miles an hour. Held, in fault for too great speed.

The "Bay State," Abbot's Admiralty, 235. Held, that a steam vessel running in a river or through a common thoroughfare for vessels will be held chargeable when going at high speed during the night or in thick weather.

The "Northern Indiana," 3 Blatch. 92. A steamer of 500 tons burthen running at the rate of seventeen miles an hour along a frequented track, and where it is impossible in consequence of the thick

fog and darkness of the night to discern an approachiug vessel in time to avoid running her down. Held, the steamer was in fault.

Rogers vs. steamer "St. Charles," 19 How. 108. A schooner lay at anchor in a dark and rainy night in a harbor much frequented in stormy weather. Held, it was the duty of the steamer to slacken her speed on entering the harbor.

See also the "Louisiana;" 2 Ben., 377.
The "Electra;" 1 Ben., 282.
The "City of Paris;" 9 Wall., 634.

We have made a careful examination of these cases and are satisfied that none of them apply to the one at bar. In all of them there was apparent danger, when the duty of slackening speed became obligatory.

It is not claimed that the propeller did not stop and reverse her engine at the instant she discovered the change of course in the scow. The master had every right to presume the scow would keep her course. She had more than half the breadth of the river ahead of her and there was no excuse for porting or coming about.

It is evident the vessels were so near together when the scow ported and exhibited her red light that no efforts of the steamer could have avoided a collision.

A steamer is not bound to insure the safety of a sailing vessel. It is not bound to proceed so carefully that no negligence on the part of a sailing vessel will produce collision.

It is most respectfully submitted that it can not be the law that a party can commit such fault as the scow did in this case, which it is apparent caused the collision, and then be permitted to call upon another party to sustain a part of the damages which she herself has occasioned. The law certainly will not indulge in conjecture in favor of a positive wrong doer and upon the possibility that something else might have in some measure aided in causing the catastrophe divide the responsibility.

A sound policy requires that such should not be the rule. Of course it has no great bearing on the merits of this question to argue that no one can be able to say that the collision would not have happened had the propeller been going at a

more moderate speed when the scow committed her fault, for the propeller had a right to regulate her speed, assuming that no fault would happen, and yet none can say it. It is mere conjecture and such conjecture should not be indulged in in favor of a wrong doer.

A sailing vessel when encountering a steamer either in open or narrow waters, has but a single duty to perform, viz.: *to keep her course.* It has been repeatedly held that from the mere fact that a collision takes place between a steamer and a sailing vessel a presumption arises that the steamer is in fault. It is usually extremely difficult to prove that a collision was occasioned by a change of course on the part of a sailing vessel, as in nine cases out of ten the crew of a sailing vessel will swear, whether truthfully or not, that they kept their course until the collision became inevitable. In this case, however, the crew of the scow admitted at least three changes of course on her part. This, of course, took away any presumption of fault on the part of the steamer, and threw upon the sailing vessel the burden of showing either that the change of course did not contribute to the collision or that the propeller was guilty of a subsequent fault which did contribute to it.

It is no excuse for the scow that she suppposed the steamer's whistle was intended for her.

The "Scotia;" 5 Blatch., 227.

Whistles are not intended as signals for sailing vessels, and a scow which acts upon such signals does so at her peril.

If the scow was in fault then to hold the propeller she must show that the collision would not have occurred if the propeller's fault had not been committed. It is scarcely necessary here to cite the numerous authorities which hold that

when a vessel is proven in fault every doubt with regard to the fault of the other vessel will be resolved against the vessel admitted to be in fault.

The "Comet;" 8 Blatch.
The "Ariadne;" 13 Wall.

We submit the decree of the Circuit Court should be affirmed.

NEWBERRY, POND & BROWN,
Libellants' Proctors.

HENRY B. BROWN, *Advocate.*

OPINION OF THE CIRCUIT COURT.

Emmons, J.

The grounds upon which the libellants demand an affirmance of the decree are that the "Free State" starboarded and ran into the "Meisel" after the latter had ported and showed her red light, and that the speed of the propeller was, under the circumstances, unlawful.

In reference to the first, the District Court found the facts against the libellant. We agree that the evidence shows the starboarding on the part of the propeller was before or nearly cotemporaneous with the porting of the "Meisel," and that such movement on the part of the latter caused the collision. We shall not discuss the evidence upon this point. The facts will be stated only for the purpose of showing the reasons why we differ from the learned judge of the District Court in reference to the application of the rule of law which requires a steamer in difficult navigation, or where from any cause there is "risk of collision," to slacken her speed.

The following facts, substantially stated in the opinion of the District Court, are all which are necessary for the purposes of the present judgment.

The "Meisel" was coming up the river between Malden and Bois Blanc Island, and near the Canadian shore. The propeller "Free State," well equipped, manned and lighted, with lookout, and officers well placed, was coming down somewhere near the middle of the channel at full speed. At the same time the steamer "Cooke" came up between the "Meisel" and the Canada shore, and exchanging the usual signals for so doing, she and the propeller passed each other to the right. The "Meisel," as the "Cooke" passed between her and the shore, starboarded, and then, if not before, displayed alone her green, and shut out from the "Free State" her red light. The wind was over the larboard quarter of the "Meisel," and she had a clear run before her in the course which the display of her green light indicated of over half a mile. No other vessel was in the

vicinity, and there was nothing to induce a suspicion on the part of the "Free State" that she would not run out the course upon which she had just entered, in circumstances rendering such duty imperative. As the "Cooke" passed the "Free State," and while the "Meisel" was displaying her green light, indicating, as she was actually running, a course to the northwest, directly across that of the "Free State," the latter, as was not only her right, but her duty, starboarded, in order to pass the "Meisel." While the ships were in this position, and in such close proximity as to make a collision inevitable from the movement, the "Meisel" ported, and displaying her red light to the propeller, ran across her bows, and was sunk so instantly as to result in loss of life. The instant the red light was opened to the "Free State," every effort was made to arrest her progress. The morning had so far advanced that vessels could be seen a mile away. The atmosphere was clear, so that lights were in no way obscured. All the conditions of navigation were favorable for safety. It presents but the common case of a descending vessel meeting a ship without a circumstance to excite fear of collision. If the duty of slackentng speed exists, it is only because the rule is universally applicable in all circumstances contemplated in article 13. even though the ships in fair weather meet in the open sea. Such a rule, counsel contended, the District Court administered in this case, and more fully explained and illustrated in the case of the "Milwaukee." It is insisted that both judgments, when taken in connection with the facts in this record, construe articles 13 and 16 of the act of 1864 as imposing upon all steamships meeting end on or nearly end on, the duty of both porting and slackening speed cotemporaneously. As a necessary result of such a rule, it is agreed a like duty is imposed upon all steamers meeting a sail vessel in circumstances demanding a change of course in order to avoid them. From this construction of the rules and all its consequences in practical navigation we are compelled to dissent. We can discover in the facts as we have stated them no duty on the part of the "Free State" to slacken her speed, until the unfavorable presentation of the red light of

the "Meisel" immediately under her bows suddenly prompted the attempt. As everything possible under the circumstance was then done, we hold her to be without fault.

So far as the practical administration of this principle is concerned in the "Milwaukee," we found no fault. In that case, from facts apparent to both masters, the courses were doubtful. It is with the argument, and some of the reasons of the judgment only, with which we disagree. In the opinion of the District Court too, in this cause, we find it said, the collision happened in the night with the channel crowded with vessels. No such facts appear in the record before us, otherwise we should promptly affirm the decree. We think in the application of this rule there would be little difference between the District Court and this. The necessity for the present discussion arises from the judicial argument in the "Milwaukee," its citation in the present case in the opinion below, and its citation by counsel as a precedent here. It by no means follows that the learned District Judge gave it any such extension.

Article 13 is as follows: "If two ships under steam are meeting end on or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other."

Article 16 provides that "every steamship when approaching another steamship, so as to involve *risk of collision*, shall slacken her speed, or, if necessary, stop and reverse, and every steamship shall, when in a fog, go at a moderate speed." It is argued that the former provides the helm shall be put to port when vessels are meeting end on so as to involve risk of collision, and as article 16 uses like language in describing the cases when speed shall be slackened, both duties must be performed at the same time.

Literally and irrespective of the former condition of the law, and of the exigencies of navigation, this is a logical conclusion. We think, however, this can not be the meaning of these rules.

Upon principle we should have no doubt whatever in reference to their meaning. But in view of the history of their

adoption by Congress, we should deem the decision of the Privy Council, reversing the judgment of Sir R. Phillimore in "The Jesmond and The Earl of Elgin, Law Reports, 4 Privy Council, 1," obligatory.

This act is but an adoption of the English rules sanctioned by act of parliament. They have sprung from much mutual consultation and political conference in both countries, and were intended to create a system common to the commerce of each. All the leading maritime powers of the world have adopted them. Were there much greater doubt than we apprehend exists as to their meaning, we have confidence the Supreme Court would follow, for the sake of harmony, the decision of the Privy Council. It is at all events the duty of this court to do so. In that case the "Jesmond" and "Elgin" were meeting end on and in the night, going at full speed. The former obeyed Art. 13 and ported. The "Elgin," when so near that the movement inevitably produced the collision, starboarded, and was sunk so suddenly as to drown a large portion of her crew. Sir R. Phillimore held that Art. 16 imposed the duty of slackening speed at the same time, and in the same circumstances in which Art. 13 required the helm to be ported. He divided the damages, therefore, upon the ground that the "Jesmond" was running at too great speed. His judgment was reversed upon appeal. There was full argument and consultation with the nautical advisors, and the rule clearly announced that where Art. 13 is obeyed, and there is nothing in the known conditions to lead either side to suspect a departure from it by the other, there is no duty to slacken speed, and Art. 16 has no application. It is said that article applies only where some known fact or one which ordinary care might discover indicates danger. It is with much emphasis said the *risk of collision* mentioned in it does not include those unexpected violations of law by an approaching ship which a good seaman would not anticipate, in the supposition that there was an experienced master in command.

The following decision, although not cited in the "Elgin," is a full precedent for the judgment. The condition of the law when it was decided was substantially the same as after

the statutory adoption of the rules in reference to porting and slackening speed. The "Rob Roy;" 3 Wm. Robinson, 191. The "Rob Roy" ran down the "Unicorn," going at full speed until she was in such close proximity the attempt to stop was useless. The green light of the "Unicorn" being extinguished, and the red light hid on account of her course, she was taken for a sail craft. The "Rob Roy" ported as she should have done had the vessel been what the light indicated. Dr. Lushington excused the "Rob Roy" for not slowing her speed, because, he says, the lights which the "Unicorn" displayed indicated it was safe not to do so.

The following American decision, made since the adoption of the rules of 1864, is equally pointed. The "Scotia;" 7 Blatch., 308. A sail vessel, in the night, was sunk by a steamer proceeding at full speed. The collision was caused by illegal lights and faulty movements on the part of the sail vessel. About half a million was involved, and the case obtained an elaborate examination. Judge Blatchford, for reasons too extensive to reproduce, held that articles 16 and 13 prescribed the duties of the parties. At page 113 he says: "The 'Scotia' kept on at 14 knots an hour," and subsequently that he "can find no fault on her part." He says, "in different circumstances he would have found the 'Scotia' in fault for not slowing or stopping when she first discovered the light of the 'Berkshire,' but the improper light on the latter made it proper for the 'Scotia' to port when she did." On appeal, Judge Woodruff, affirming the decision of the District Court, although differing with some of its reasoning in other respects, approved fully the portions we have quoted. He says: "The law before the statute was that declared by it; and therefore the rule as to slowing would be the same under the one as the other." On page 334 he inquires, "ought she to have slackened her speed sooner than she did?" Proceeding to answer the query he says: "Whether the light she saw was on a steamer or on a sailing vessel, no duty to slacken speed or change the course of the "Scotia" arose until there was reason to apprehend a collision." "The suggestion that it was her immediate duty to slacken her speed when saw the light, assume

what in the first instance is not to be assumed. If she saw the light, and observed it diligently without having reasonable ground for apprehending a collision, no duty to slacken speed, or even to change her course, was created." He illustrates at length the policy of the rule which authorized the "Scotia" to act with confidence upon apparent indications, without any assumption that there was or would be any violation of law on the part of the approaching ship.

To these literally applicable and pointed decisions many may be added, which, by their necessary assumption of the rule, are equally efficient in its support. It was not intended to change the "*rule of the road*," so far as any duty in this case was concerned, by the adoption of these articles. The regulations they establish are as old as steam and the modern improvements in navigation. The introduction of colored lights wrought no difference in their principle. They, by a certain indication of courses, made their application more easy. For all time since the matter came under judicial discussion, it has been law, when vessels are meeting end on, to port the helm and go ahead with confidence. It is law, equally familiar and equally old, that when vessels of any kind are approaching each other, under circumstances which in any degree indicate to an experienced seaman risk of collision, they must slacken their speed, and if necessary stop. This statute being but a reiteration of these principles, must by the most familiar rules of interpretation be read in reference to them. They will be held to modify them only so far as their plain and express provisions compel.

That the old so called "Golden Rule" of porting and passing to the right was established before the act of 1864, see "St. John" *vs.* "Paine;" 10 How., 583: The "Nimrod;" 1 Eng. Law & Eq., 500: Story on Bail'ts, 611: "The Rose," 2 W. Rob., 1, lays down the rule stringently, 1 Par. Ad. 569, and note 4, and fully affirming the rule, see New York Co. *vs.* Navigation Co., 22 How., 461, citing some of the leading English and American judgments, the Supreme Court says, the rule is well established.

That when approaching each other in circumstances indi-

cating danger of collision, it was the duty of steamers to slow before the adoption of article 16, is abundantly shown by decisions which are immediately cited for a slightly different purpose.

Save in the case of the "Elgin" and "Jesmond," the "Rob Roy" and the "Scotia" before cited, and a few others, judges have seldom taken pains affirmatively to assert the truism that vessels passing each other, where there are no apparent circumstances to indicate danger, need not slacken their speed. But this has been so universally assumed, the law should be deemed at rest.

In order to establish old maxims it is by no means necessary, and is often difficult, to produce cases where the precise point has been raised and adjudicated. In Coulton *vs.* Bragg, 15 East., 223, Lord Ellenborough said: "It is not only upon decided cases, where the point has been raised but also from the continued practice of the court, without objection made, that we collect the rules of law." 2 Brod. & Bing., 599, Lord Eldon, with much spirit, replying to what had been said at the bar, answered: "That the most enlightened judges who ever sat in Westminster Hall always gave the greatest weight to what had obtained in practice." And see 1 Blackstone, 68; Ram. on legal Judgments, 12; Bennet *vs.* Watson, 3 M. & S.; Rigg *vs.* Pennsylvania, 16 Peters, 621; U. S. *vs.* Hudson, 7 Cranch, 32; Briscow *vs.* Commonwealth of Kentucky, 11 Pet., 319. A long list of concurring judgments, therefore, which necessarily involve a proposition, are as efficacious for its support as if it were affirmatively ruled.

A very large majority of all the decisions in reference to collisions, both English and American, assumed as well as settled this principle, that actual perceived danger alone demands the duty of slackening speed.

The Cognac, Holt's Rule of the Road, 133: Two vessels approached end on. The one followed the rule and ported, but tve other suddenly starboarded and brought about the collision. Dr. Lushington pronounced against the offending ship, although the other was proceeding under full steam; no criticism whatever was made upon the rate of speed.

The Concordia, Holt. 142 : So far as this question is concerned, the facts are substantially the same as those in the Cognac. For a faulty starboard movement the Concordia was condemned for the whole damage, although the other vessel was proceeding with rapidity up to the moment of the collision.

The Mary Sanford, 3 Ben., 100 : The argument is full to sustain the rule.

The Wenona, 8 Blatch., 499 : Justice Woodruff reversed the judgment of the District Court, where a schooner with misleading lights, and which made a faulty starboard movement immediately preceding the collision, was run down at night by a steamer going at full speed. In a judgment admirable for its clearness, he demonstrates the legal right of the master of the Wenona to proceed in the confident assumption, not only that the schooner's lights were properly placed, but that she would pursue the course they indicated. The facts are so strikingly like those before us that the judgment in the one case would equally apply in the other. In Lowndes on Collision, 59 et seq., is an intelligent analysis of most of the leading cases where ships have been condemned for too great speed. His citations and comments abundantly show that the duty of slackening speed is dependent alone upon the exigencies indicating danger. The America, 3 Ben., 424, is another instance of the condemnation of a vessel for a faulty movement in the immediate presence of an approaching ship, when both were proceeding at the usual rate, without any intimation of a fault on that account. New York Transportation Co. vs. Savannah Steamship Co., 22 How., 461 : A steamer was coming up the Delaware with unabated speed, and ported in order to pass a tug with a tow attached by a hawser. The latter improperly starboarded and a collision ensued. The Supreme Court held the steamer did its whole duty if she slowed and endeavored to stop as soon as she discovered the improper movement.

These few judgments are referred to simply to illustrate a mode of argument which may be successfully pursued through nearly all the great mass of decisions, where ships at full

speed have come into collision, and one has been condemned in the entire damages for sudden faults which could not be anticipated by the other. That those which are most illustrative have been selected, is not supposed. In the brief time allowed for the purpose, it is accidental if they are so.

A long list of judgments illustrating the circumstances in which it is the duty of a steamer to slow, and demonstrating, we think, satisfactorily that they wholly exclude those contained in this record, has been analyzed in the instructive and thorough argument of the respondents counsel. It has greatly aided the court. The length of our judgment prohibits what we had intended—its literal adoption. The perusal of these cases with attention challenged to the argument that all of them with more or less force assume, that some affirmative evidence of danger must be present in order to impose the duty of decreasing speed, will result in a concession of the position.

The Louisiana, 21 How., 1 ; The Watt., 2 Wm. Rob., 271 , The Birkenhead, 3 W. Rob., 75 ; Nelson vs. Leland, 22 How.; 48 ; The Rossiter, Newb., 225 ; The Buffalo, Ibid., 115 ; McCready vs. Goldsmith, 18 How., 89 ; The New York, Ibid, 223 ; The Bay State, Abb. Adm'rs, 235 ; Northern Indiana, 8 Blatch , 92 ; The St. Charles, 19 How., 100 ; The Louisiana, 2 Ben., 377 ; The Electra, 1 Ben., 282 ; The City of Paris, 9 Wall., 634. We have examined these judgments and can say with confidence they fully sustain the argument which the learned counsel has deduced from them. They show that if we hold in this case that it was the duty of the "Free State" to slow, where every condition before her promised perfect safety in full speed, the judgment will stand without a fellow, unless it finds one in those which have been overruled.

Benedict, Conklin, Parsons, Abbott, Angell on Carriers, in laying down the general rule, treat the judgments sustaining it in the same mode. If there be one elementary principle better established than another, we should say it is that which authorizes a seaman, having complied with every rule of navigation, in the absence of all indications of danger, to proceed

with unabated speed, in full confidence that others would also perform their duty.

The obligation on the part of the "Meisel" to keep her course is as imperative as that of the "Free State" to keep out of her way. The statutory rules themselves and the judgments already referred to in reference to the speed of the steamer clearly affirm it. We add, however, a few adjudications more particularly discussing the precise duty. They all deny the right of this sail craft to return to her former course, after having selected another immediately in front of an approaching steamer. The Wenona, 8 Blatch., 499, before cited, goes quite beyond the necessities of this case; The Scotia, 5 Blatch, 227; Olcott, 304; The Argus, Olcott, 304; The Empire State, 1 Ben., 51; The Governor, 1 Cliff., 93; The Bridgeport, 6 Blatch., 3; St. John vs. Paine, 10 How., 557; The Oregon vs. Rocca, 18 How., 570; The Scotia, 7 Blatch., 308; The Queen, 8 Blatch., 234; The Potomac, 8 Wall., 590; held a steamer faultless which was running nine miles an hour with no abatement of speed until just before the collision, although a sail vessel was run down, which suddenly changed her course and crossed her bows. The case is much like the present. See New York Co. vs. Rumball, 21 How., 322; 1 Cliff., 75, 331, 38, 415 and 483. These judgments and numerous similar ones also establish what results necessarily from the rule itself, that if the sailing vessel must keep her course and it is the duty of a steamer to avoid her, the mode in which this is to be done is not to be closely criticised. The selection is wholly for the latter.

Having fully approbated the construction which authorized unabated speed in the circumstances of this case, we desire to call special attention to the conditions in which alone such a rule will be administered. The utmost diligence will be demanded in order to discover the earliest indications of danger, and prompt precautions required to avoid their consequences when known.

As we understand article 13, it is a duty to port before any risk of collision has accrued. It would be a fault for which a steamer could be condemned if she waited until there was

actual danger, such as is required in article 16. They by no means contemplate the same circumstances, or prescribe duties to be performed at the same time. The former is to be understood as if it read as follows: "If two ships under steam are meeting end on or nearly end on, so as to involve risk of collision; *if their respective courses were continued*, the helms of both shall be put to port, *before any such risk is incurred*, so that each may pass on the port side of the other." See "The Nichols," 7 Wall., 656, which decides the porting must be so early that no danger is incurred. If the rule had been so worded, it never would have occurred to Sir R. Phillimore that there was any analogy between it and article 16. The *one* would have commanded the duty of porting before any risk of collision arises; the latter, that of slowing only where the risk has actually arisen. But the practical and judicial *meaning* of Art. 13 is precisely as if it so read, and it is therefore impossible that the two duties, that of porting and that of slowing, under the 16th article. can be cotemporaneous. Such a result is deduced only by a mere literalism, wholly overlooking the substantial mandate to port long before the exigencies arise which call for the duties demanded by Art. 16. This interpretation reconciles the rules, and warns masters that they must port their helms at such safe distances, and accompanied by such watchfulness and care as would render wholly inapplicable the act of slowing their engines.

The "Sunny Side," East. Dist. of Mich., March, 1873, just decided by this court, is an application of the same principle, for the justification of a sail vessel which, keeping her course under the rule, ran down and sank a tug. Both judgments are necessary for an understanding of the qualifications with which we would like to see the rule administered. A large number of experienced experts have been examined since the argument, and without exception old masters of sail vessels as well as steamers pronounce the suggestion of a duty to slow in such circumstances a novelty. It is one which is not performed on the one hand, or expected or desired on the other. All with great strength of preference declare in favor of holding both parties inexorably to the rules, and authoriz-

ing neither to anticipate a departure by the other until actual present peril demonstrates that further adhesion is beyond all question dangerous. It is said a large majority of all collisions result from a too hasty decision that exigencies demand a deviation.

In the general principles of law we have announced, we have much confidence. Whether another tribunal, in a disposition to divide a misfortune, may not so criticise the conduct of the "Free State" as to impute some fault, we are less certain. But believing there is no greater discouragement to the able officer, and no greater injustice to liberal owners who compensate them than those hypercritical judgments which demand a standard utterly impossible in practical navigation, and which are always announced in the interests of those but for whose wrongs the losses complained of would never occur. We have brought the steamers conduct in this case to such a test only as we believe old and able mariners, having a love for and a pride in their profession, would sustain. The ruling we make has the sanction of many such.

Decree reversed and libel dismissed.